

**The Ohio Department of Agriculture and the National Pollutant Discharge
Elimination System Program – Program Revision under 40 CFR Part 123**

Volume 3
Table of Contents

Enforcement Documents

**OHIO DEPARTMENT OF AGRICULTURE
STATE OF OHIO**

In re:

OHIO FRESH EGGS, LLC

Order No. 2006- 441

Respondent

ORDER

Based on the record before me I find that on September 29, 2005, the Ohio Department of Agriculture ("the Department") issued a Notice of Opportunity for Hearing to Ohio Fresh Eggs, LLC (sometimes referred to as "OFE"). The Notice advised Ohio Fresh Eggs of the Department's proposal to issue an order revoking certain Permits to Install and Permits to Operate held by OFE for failure to comply with sections 903.02(C)(1), 903.03(C)(1), and 903.05 of the Ohio Revised Code and section 901:10-1-02(A) of the Ohio Administrative Code ("OAC"). The specific permits proposed for revocation were:

Croton facility -

OFL 1-0001.PI001.LICK
OFL 2-0001.PI001.LICK
OFL 3-0001.PI001.LICK
OFL 4-0001.PI001.LICK
OFL 1-0001.PO001.LICK
OFL 2-0001.PO001.LICK
OFL 3-0001.PO001.LICK
OFL 4-0001.PO001.LICK
OFP 1-0001.PO001.LICK
OFP 2-0001.PO001.LICK
OFP 3-0001.PO001.LICK
OFP 4-0001.PO001.LICK
OFHB-0001.PO001.LICK

Northern facilities -

OFGO-0001.PO001.HARD
OFMT-0001.PO001.HARD
OFMA-0001.PO001.WYAN

Ohio Fresh Eggs submitted a timely request for a hearing before the Department with respect to the proposed revocations.

The hearing was held over a period of eight days before Howard D. Silver, Hearing Officer. The hearing began June 7, 2006 and concluded June 16, 2006. The Department of Agriculture was represented by L. Scott Helkowski and John K. McManus, Assistant Attorneys General. The Respondents were represented by Joseph Reidy and Elizabeth Tulman of Schottenstein Zox & Dunn. On October 31, 2006, the Hearing Officer issued his Report and Recommendation, which was received by Respondents on November 1, 2006.

The State and Respondents filed Objections to the Report and Recommendation on November 13, 2006. Both parties also filed closing argument briefs with the Hearing Officer prior to the issuance of the Report and Recommendation.

State's and Respondents' Objections to the Report and Recommendation, the parties' briefs and relevant portions of the transcript and exhibits were considered by the Department before approving, modifying or disapproving the Report and Recommendation.

After careful consideration, by the authority vested in my office by law, it is hereby ORDERED:

1. That the Findings of Fact and Conclusions of Law contained in the Report and Recommendation attached hereto as Exhibit A, are adopted in part and reversed in part;
 - a. Specifically, I reverse the Hearing Officer's granting of Respondents' Motion in Limine which limited the evidence to Respondents' acts

which occurred prior to ODA's granting of the Permits to Install and Permits to Operate to Respondents as such evidence is relevant to the determination of this revocation action;

- b. The remainder of the Report and Recommendation is adopted as my own;
2. That the Recommendation contained in the Report and Recommendation attached hereto as Exhibit A is approved and confirmed;
3. That Respondents' Objections, attached as Exhibit B, are overruled;
4. That State's Objection, attached as Exhibit C, is adopted;
5. That Respondents' Reply to State's Objections, attached as Exhibit D, is overruled;
6. That the following permits of Respondent Ohio Fresh Eggs, LLC, are hereby revoked:

Croton facility -

OFL 1-0001.PI001.LICK
OFL 2-0001.PI001.LICK
OFL 3-0001.PI001.LICK
OFL 4-0001.PI001.LICK
OFL 1-0001.PO001.LICK
OFL 2-0001.PO001.LICK
OFL 3-0001.PO001.LICK
OFL 4-0001.PO001.LICK
OFP 1-0001.PO001.LICK
OFP 2-0001.PO001.LICK
OFP 3-0001.PO001.LICK
OFP 4-0001.PO001.LICK
OFHB-0001.PO001.LICK

Northern facilities -

OFGO-0001.PO001.HARD
OFMT-0001.PO001.HARD
OFMA-0001.PO001.WYAN

7. In order to assure the orderly and environmentally acceptable cessation of operations

at the Respondents' facilities, the Respondents shall proceed as follows:

- a. Respondents shall close a barn every two (2) business days, commencing within twenty (20) business days of the effective date of this ORDER. All barns closed as of the effective date of this ORDER shall be considered closed and shall remain closed.

- 1) Respondents shall begin barn closures commencing at the Croton facilities located in Licking County. Respondents shall proceed as follows:

- a) Close all barns at Croton Layer Site No. 1;
- b) Close all barns at Croton Layer Site No. 4;
- c) Close all barns at Croton Pullet sites No. 1 and No. 2, the breeder site, and hatchery;
- d) Close all barns at the Goshen facility, located in Hardin County
- e) Close all barns at the Mt. Victory facilities, located in Hardin County;
- f) Close all barns at the Marseilles facilities, located in Wyandot County;
- g) Close all barns of the Croton Pullet sites No. 3 and No. 4;
- h) Close all barns at Croton Layer Site No. 2; and
- i) Close all barns at Croton Layer Site No. 3.

8. Barn closures include, but are not limited to:

- a. Remove all poultry. In no case may poultry be temporarily moved from one set of closing facilities to another set of facilities scheduled for closure;
- b. Clean, remove or dismantle feed bins and feed conveyor lines;
- c. Drain all water lines and shut off service to all water lines.

9. Concurrent with the sequence of barn closures listed above, Respondents shall commence closure of any manure storage ponds or manure treatment lagoons not authorized

by the National Pollutant Discharge Elimination System (NPDES) permits issued by the Director of Ohio EPA. Closure shall be performed in accordance with paragraph (B) of rule 901:10-2-18 of the Ohio Administrative Code;

10. Barn closures of all of Respondents' facilities shall be completed by July 6, 2007. Manure shall be removed from all barns and manure storage or treatment facilities, and all manure treatment facilities shall be closed no later than November 30, 2007;

11. That upon journalization a certified copy of this Order be sent to the following:

L. Scott Helkowski, Esq.
John K. McManus, Esq.
Assistant Attorneys General
Ohio Attorney General's Office
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

and

Joseph Reidy, Esq.
Elizabeth Tulman, Esq.
Schottenstein Zox & Dunn
P.O. Box 165020
Columbus, Ohio 43216



Effective date of this Order: Upon journalization

Howard F. Wise
Howard F. Wise, Assistant Director

Nov. 30, 2006
Date

Entered Ohio Department of Agriculture Journal on this 30th day of
November, 2006 by Cornie Lellis

NOTICE OF APPEAL RIGHTS

This ORDER may be appealed within 30 days to the Environmental Review Appeals Commission (ERAC), 309 South Fourth Street, Room 222, Columbus, Ohio 43215, pursuant to Section 903.09 of the Revised Code. The notice of appeal must set forth the ORDER appealed from and the grounds of the party's appeal. A copy of the Notice of Appeal shall also be filed with the Director of Agriculture within three days after filing the appeal with ERAC.

CERTIFICATION

STATE OF OHIO,
COUNTY OF LICKING, SS

Order No. 2006-441

I, Howard F. Wise, Assistant Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of ORDER #2006-441, which was entered upon the order journal of the Ohio Department of Agriculture on 30th day of November, 2006.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Columbus, Ohio, this 30th day of November, 2006.

Howard F. Wise
Howard F. Wise, Assistant Director
Ohio Department of Agriculture





Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: www.state.oh.us/agr/ • e-mail: agri@mail.agri.state.oh.us

November 30, 2006

Mill Creek Dairy
C/o Andrew Brehm
15188 US 127
West Unity, OH 43570

Certified Mail

Re: **Warning Letter**
Permit No. MIL-0001.PO001.WILL

Dear Mr. Brehm:

ODA has determined that Mill Creek Dairy, LLC (Mill Creek or "Facility") has failed to comply with sections 903.02(C)(1), 903.03(C)(1) and 903.05 of the Ohio Revised Code (ORC) and rule 901:10-1-02(A)(4) of the Ohio Administrative Code (OAC). This Warning Letter summarizes our findings of violations and required actions to be taken to return to compliance.

On April 1, 2004, the Director of the Ohio Department of Agriculture ("Director" and "ODA") issued an Order for a Permit to Install and a Permit to Operate (PTO), Order No. 2004-057, as well as PTO MIL-0001.PO001.WILL to Andrew Brehm and Mill Creek Dairy.

As required by OAC 901:10-1-08, Mill Creek informed the Director in November 2005 that it proposed to include Jacob Schot and Arno Schot as operators of Mill Creek. Andrew Brehm would continue to assume responsibilities as the owner of the Facility.

Based on information submitted by Mill Creek as required by 903.05 of the ORC and OAC 901:10-1-08 and based further on additional information regarding compliance history obtained by my staff in the Livestock Environmental Permitting Program (LEPP), we evaluated the compliance history of Jacob Schot and Arno Schot, and concluded that there were substantial issues of noncompliance regarding Jacob Schot and Arno Schot in their operation of New Flevo Dairy, 9717 Forester Road, Adrian, Michigan. A copy of the staff evaluation of Jacob Schot and Arno Schot was transmitted by facsimile copy to Mr. Brehm in November 2005.

In response to this staff evaluation, in January 2006, Mill Creek informed the Director that it proposed to include Klaas [Klaas-Hendrik or "Klaus"] Koopman as operator of Mill Creek with Andrew Brehm as the owner of the Facility.

Based on Section 903.05 of the ORC and OAC 901:10-1-08 and based further on additional information obtained by my staff regarding the compliance history of Klaas Koopman, the Director issued Order No. 2006-073 on February 22, 2006, to modify the permit as PTO MIL-0002.PO001.WILL and authorize Klaas Koopman to be the operator of Mill Creek.

ODA obtained a copy of a lease entered into by Mill Creek Dairy, LLC and New Flevo Dairy beginning December 1, 2005, automatically renewable for successive one (1) year terms until December 31, 2015. Mill Creek is identified as the Landlord and New Flevo Dairy is identified as the Tenant. As noted above, New Flevo Dairy is owned by Jacob Schot and Arno Schot. For purposes of the lease the term "Waste" is defined as all manure as defined in Section 903.01 of the ORC. Pursuant to terms of the lease, Tenants were to use the premises for the operation of a dairy farm or any other use, which Landlord approves in writing. Further, Tenants were financially and environmentally responsible for containing and conveying all waste in designated waste storage facilities. The Landlord--Mill Creek -- was financially and environmentally responsible for pumping, transporting, spreading and containing waste on applied lands, from the waste storage facilities.

During an inspection conducted by the LEPP Inspector on October 26, 2006, the Inspector determined that Mill Creek is actually operated by Unity Dairy, LLC. Thereafter, LEPP confirmed that no background report exists on file for Unity Dairy. Unity Dairy, LLC and New Flevo Dairy are not authorized or approved by the Director to own or operate Mill Creek. In the Articles of Organization that are filed with the State of Ohio, Secretary of State, there are no names of members listed as Unity Dairy, LLC. Only Monique Koopman, 205 Lloyd Road, Statesville, North Carolina, 28625 is listed as an authorized representative of Unity Dairy, LLC. Specifically, Klaas Koopman is not listed as a member of Unity Dairy, LLC. The only person with a background report on file with the Director's approval to serve as operator of Mill Creek is Klaas Koopman. A copy of the Director's Order approving Mr. Koopman as operator was sent to Mill Creek by the LEPP Inspector on November 14, 2006.

By failing to list Arno Schot, Jacob Schot, Monique Koopman, New Flevo Dairy or Unity Dairy, LLC on the permit as required, Mill Creek's permit contains misleading or false information. OAC 901:10-1-03(A)(1) provides that "The Director shall deny, suspend or revoke a permit to operate if: (1) The permit application contains misleading or false information."

Upon receipt of this letter Mill Creek and Andrew Brehm shall correct these deficiencies by providing to the Director, **not later than December 31, 2006**, a true statement

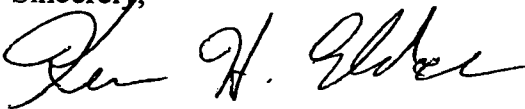
notarized by a person independent of Mill Creek Dairy, LLC, which states all of the following:

1. Andrew Brehm is the sole owner and Klaus Koopman is the sole operator of Mill Creek Dairy, LLC; and
2. Any lease or other agreement for operation of Mill Creek Dairy:
 - between Mill Creek Dairy and New Flevo, or
 - between Mill Creek Dairy and Arno Schot, or
 - between Mill Creek Dairy and Jacob Schot, or
 - between Mill Creek Dairy and Monique Koopman, or
 - between Mill Creek Dairy and Unity Dairy, LLC, is terminated.

If Mill Creek and Andrew Brehm fail to comply with this corrective action, the Director will propose to issue a revocation order in accordance with Section 903.09(F) of the ORC and thereby afford Mill Creek and Andrew Brehm an opportunity for an adjudication hearing under Chapter 119. of the ORC.

Please direct any questions concerning this Warning Letter to legal counsel for this program, Jennifer Tiell or Kristina Erlewine, at 614-387-0470. Please send properly notarized statements with evidence of compliance to my attention. I look forward to your cooperation in this matter.

Sincerely,



Kevin H. Elder, Executive Director
Livestock Environmental Permitting Program

Cc: Andrew Ety, LEPP Engineer
Jennifer Tiell, Legal Counsel, Ohio Dept. of Agriculture
Kristina Erlewine, Legal Counsel, Ohio Dept. of Agriculture
Chris Rodabaugh, LEPP Inspector
Cathy Alexander, Ohio EPA
Tom Traxler, Williams SWCD



Ohio Department of Agriculture



Governor Bob Taft

Lieutenant Governor Jennette Bradley

Director Fred L. Dailey

Administrative Offices

8995 East Main Street • Reynoldsburg, Ohio 43068-3399

Phone: (614) 466-2732 • Fax: (614) 466-6124

ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

Certified Mail Return Receipt Requested

November 27, 2006

Assen Dairy, LLC
C/o Pieter and Johannes
8500 Yankeetown-Chenoweth Road
London, Ohio 43140

Re: Director's Notice of an Adjudication Hearing

Dear Mr. Assen:

This document is notice that the Director of the Ohio Department of Agriculture ("Director") ("ODA" or "Department"), under the authority of Ohio Revised Code ("R.C.") 903.16, proposes to issue an order to Assen Dairy, LLC ("Assen Dairy") imposing a civil penalty of \$57,000 because of the ODA's determination that Assen Dairy has failed to comply with Rule 901:10-2-04 of the Ohio Administrative Code (OAC).

The facts in support of the Department's proposed findings of continued noncompliance are as follows:

On July 3, 2006, ODA issued a Warning Letter to Assen Dairy, LLC citing results of a partial inspection conducted in response to a discharge noted and observed by Ohio EPA on June 6, 2006. At that time Harry Kallipolitis, Ohio EPA, Division of Surface Water, Storm Water Program, observed a discharge coming from the feed storage and feed preparation area and discharging into an unnamed tributary. The Inspector from the Livestock Environmental Permitting Program (LEPP) visited the facility to confirm the discharge and the containment and corrective actions of the discharge.

In October 2005, ODA reviewed and approved plans for the construction of a storm water/leachate pond for your facility. At the time of the July 3, 2006 Warning Letter, construction of this storage pond had begun but had since stopped. Rule 901:10-2-04 of the Ohio Administrative Code (OAC) requires

facilities to be built to contain and store storm water and leachate. ODA's July 3, 2006 Warning Letter required Assen Dairy, LLC to complete construction of the approved storm water/leachate pond as soon as possible but no later than July 31, 2006.

On August 23, 2006, a LEPP Inspector conducted a partial inspection of your facility and determined that Assen Dairy had failed to comply with the July 3, 2006 Warning Letter. On September 7, 2006, a Director's Notice of Deficiencies Resulting in Noncompliance (NOD) was issued to Assen Dairy, LLC. ODA determined that Assen Dairy, LLC failed to contain storm water and leachate in a pond as required by Ohio Administrative Code Rule 901:10-2-04. Assen Dairy, LLC was required to correct the deficiencies by September 25, 2006 by completing construction of the approved storm water/leachate pond.

On October 6, 2006, a LEPP Inspector conducted another partial inspection of Assen Dairy to determine whether Assen Dairy, LLC had complied with the required corrective actions in the September 7, 2006 NOD. The inspector determined that Assen Dairy still had not completed construction of the storm water/leachate pond.

During a regularly scheduled ODA inspection on November 8, 2006, it was determined that additional excavation had been completed since the October 6, 2006 inspection, but only to approximately two-thirds completion of the excavation. Therefore, the pond was still not complete at this time, since additional excavation and the installation of the clay liner system is still required.

Based on Assen Dairy, LLC's failure to correct the deficiencies by the required date and the failure to return to compliance, the Director is now issuing this Notice of Hearing ("Notice") and proposing the imposition of a \$1000.00 penalty for each day beginning July 31, 2006 and ending September 25, 2006 that Assen Dairy was not in compliance for a total of \$57,000.

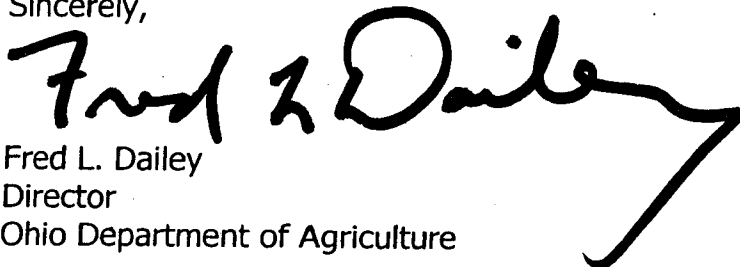
Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: William A. Hopper, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on November 27, 2006.

Please note that if your company is a corporation or limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent your company at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed civil penalty should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department may issue a final order without a hearing.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is stylized with a large, sweeping "F" and a long, horizontal stroke at the end.

Fred L. Dailey
Director
Ohio Department of Agriculture

Cc: Kevin H. Elder - Executive Director, Livestock Environmental Permitting
Program
William J. Hopper - Chief Counsel, ODA
Anthony L. Seegers - Assistant Attorney General
Jennifer Tiell - ODA Legal Counsel
Kristina Erlewine - ODA Legal Counsel
Cathy Alexander - Ohio EPA
Jim Young - ODA LEPP Inspector
Andy Ety - ODA LEPP Engineer
Madison SWCD
File



Ohio Department of Agriculture



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8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-387-0470 • Fax 614-728-6335
ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

November 9, 2006

Dull Homestead
C/o Mr. Pete Dull
10404 National Road
Brookville, Ohio 45309

Certified Mail

Re: Warning Letter-Freeboard

Dear Mr. Dull:

A violation of Ohio Department of Agriculture laws and rules was discovered during a routine inspection of Dull Homestead by my staff on October 19, 2006. On that date, the inspector from the Ohio Department of Agriculture Livestock Environmental Permitting Program (LEPP) found that the manure depth in finishing barn #1 was less than ½ inch from overflowing through the pit fan opening. During the previous routine inspection on March 23, 2006, the inspector from LEPP found that the manure depths in three barns were within 2-3 inches of the 6 inch freeboard level.

The following rule is at issue:

Rule 901:10-2-08(A)(4)(b) of the Administrative Code requires that the operating level of a fabricated structure must not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code, plus an additional six inches of freeboard.

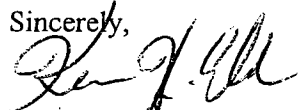
You must take immediate action to lower the manure level in the barns nearing the freeboard limit. Removal of all manure from all barns shall be top priority. The report from the October 19, 2006 routine inspection provides detailed information regarding the maximum operating levels in the pits and approximate amounts of manure needing removed this fall to provide the minimum of 120 days storage. ODA staff will conduct a follow-up inspection in Mid-November to check on your manure hauling progress.

After this inspection, we will periodically check your manure hauling progress. When you are applying manure, you must keep all the required application records in your operating record and make these records available to the LEPP inspector.

Finally, I advise you that these requirements for periodic monitoring and records of liquid manure levels are all requirements of federal rules enforced by the United States Environmental Protection Agency. My staff and I will work with you to answer any questions you may have about these rules and the requirements in Ohio rules.

I advise you to read your Inspection Report carefully and follow all directions made by the LEPP Inspector. You are also advised to follow the directions of this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kevin H. Elder", written over the word "Sincerely,".

Kevin H. Elder

Executive Director, Livestock Environmental Permitting Program

Cc: Christine Pence, LEPP Inspector
Jennifer Tiell, Legal Council
Cathy Alexander, Ohio EPA
Montgomery SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

Administrative Office
8995 East Main Street • Reynoldsburg, Ohio 43068-
Phone: (614) 466-2732 • Fax: (614) 466-
ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

Certified Mail Return Receipt Requested

October 30, 2006

Van Ham Dairy LLC
C/o Mr. and Mrs. Jan Van Ham
22177 Road C
Continental, Ohio 45861

Re: Director's Notice of an Adjudication Hearing

Dear Mr. and Mrs. Van Ham:

This document is notice that the Director of the Ohio Department of Agriculture ("Director") ("ODA" or "Department"), under the authority of Ohio Revised Code ("R.C.") 903.16, proposes to issue an order to Van Ham Dairy LLC ("Van Ham Dairy") imposing a civil penalty of \$32,000.00 because of the ODA's determination that Van Ham Dairy has failed to comply with Ohio Administrative Code ("O.A.C.") 901:10-2-01(B)(2).

O.A.C. 901:10-2-01(B)(2) provides, in pertinent part:

"Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted for the permanent record."

The facts in support of the Department's proposed findings of continued noncompliance are as follows:

On December 16, 2004, the ODA informed Mr. Jan Van Ham, as owner and operator of Van Ham Dairy, that Van Ham Dairy needed to submit to the ODA a complete set of as-built plans and a notarized letter as required in O.A.C. 901:10-2-01(B)(2) before the ODA could authorize Van Ham Dairy to utilize the manure storage pond. During an inspection on December 21, 2004, an ODA Livestock Environmental Permitting Program ("LEPP") inspector observed that Van Ham Dairy was using the manure storage pond despite its failure to provide the ODA with a copy of the approved as-built plans and notarized letter as required by O.A.C. 901:10-2-01(B)(2).

On February 22, 2005, the ODA issued a Notice of Deficiencies Resulting in Noncompliance ("NOD") to Van Ham Dairy for its failure to comply with O.A.C. 901:10-2-01(B)(2). Van Ham Dairy was required to correct the deficiencies by November 1, 2005 by providing notice to the ODA by telephone and in writing as soon as the manure storage pond was emptied. In the written notification to the ODA, Van Ham Dairy was required to describe its actions to remove the temporary dike and complete the construction of the bottom of the manure storage pond. The corrective actions also required Van Ham Dairy to submit a complete set of as-built plans identifying all of the following:

1. Location of exploratory trench, with approximate location of all tiles encountered and a brief description of how these tiles were plugged and/or rerouted.
2. Documentation of proof-rolling requirements of all final surfaces of the manure storage pond and confirmation that all material in the bottom of this manure storage pond is as identified in the approved plans.
3. Documentation that the bottom 9-inches of the pond was disked and recompactd as described in the approved plans.
4. Documentation that all engineered fill was placed as was described in the approved plans.
5. Location and description of liquid level markers as was described in the approved plans.
6. Verification that scour protection was installed as was described in the approved plans.
7. A final survey of the entire manure storage pond, after dike removal, that shows compliance with the approved set of design plans.

An inspection of Van Ham Dairy was conducted by LEPP on November 9, 2005 to determine whether Van Ham Dairy had complied with the required corrective actions in the February 22, 2005 NOD. The LEPP inspector determined that Van Ham Dairy had failed to make the necessary corrections by November 1, 2005 set forth in the February 22, 2005 NOD. Based on Van Ham Dairy's failure to correct the deficiencies by the required date, and the failure to return to compliance, the Director is now issuing this Notice of Hearing ("Notice") and proposing the imposition of a \$800.00 penalty for each day after the NOD's deadline of November 1, 2005 that Van Ham Dairy was not in compliance for a total of \$32,000.00.


Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: William A. Hopper, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on October 30, 2006.

Please note that if your company is a corporation or limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent your company at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed civil penalty should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department may issue a final order without a hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred L. Dailey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Fred L. Dailey
Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting
Program

William J. Hopper, Chief Counsel, ODA
Anthony L. Seegers, Assistant Attorney General
Jennifer Tiell, ODA Legal Counsel
Kristina Erlewine, ODA Legal Counsel
Cathy Alexander, Ohio EPA
Chris Rodabaugh, LEPP Inspector
Van Wert SWCD
File



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

October 18, 2006

The Honorable Jim Petro
Attorney General of Ohio
C/o Dale T. Vitale, Senior Deputy for Environmental Enforcement
State Office Tower
30 East Broad Street, 17th floor
Columbus, Ohio 43015

Re: Referral of Monte and Sheila Tuck
7895 Parker Road
Bloomville, Ohio 44818

Dear Mr. Petro:

In accordance with Sections 903.16 of the Ohio Revised Code, I hereby request that your office take appropriate enforcement action against the above-referenced individuals as owners and operators of an animal feeding facility for violations of Chapter 903 of the Ohio Revised Code (ORC) and its associated regulations.

By letter dated August 25, 2005, the Chief of the Ohio Department of Natural Resources (ODNR), Division of Soil and Water Conservation, provided a copy of an order issued under Section 1511.02 of the ORC to the Ohio Department of Agriculture that specified that the animal feeding facility owned and operated by Monte and Sheila Tuck was causing agricultural pollution by failure to comply with standards established under that section. My designated representative, Kevin Elder, Executive Director, Livestock Environmental Permitting Program, Ohio Department of Agriculture (ODA) directed his staff to inspect this facility. ODA inspections commenced on September 18, 2005 and continue to show that Tuck Farms is not a small or medium concentrated animal feeding operation, as defined by the federal Water Pollution Control Act; nevertheless, the facility is not being operated in a manner that protects the waters of the state and must be permitted in accordance with Section 903.082 of the ORC. Since September 19, 2005, Monte and Sheila Tuck have failed to comply with ODA requests to comply with permitting requirements.

On September 7, 2006, I notified Mr. Tuck of my determination that Tuck Farms and Monte and Sheila Tuck are required to be permitted in accordance with Section 903.082 of the ORC. Based upon the results of inspections conducted by ODA, including an inspection on October 5, 2006, I request enforcement action by your office. Specifically,

I request action to prohibit any further stocking of livestock at this facility unless or until the facility returns to compliance.

If there are any questions about this case or matters related to this request, please direct them to either Jennifer Tiell or Kristina Erlewine, of my staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred L. Dailey", with a long, sweeping horizontal stroke extending to the right.

Fred L. Dailey
Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting
Program.
David Hanselmann, Chief, Ohio Dept. of Natural Resources, Division of Soil and
Water Conservation



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: www.state.oh.us/agr/ • e-mail: agri@mail.agri.state.oh.us

October 12, 2006

5C's Farm Inc.
Bill Cleland Jr.
06083 Cicero Rd.
Hicksville, OH 43526

Certified Mail Return Receipt Requested

Re: Warning Letter: 5C's Farm Inc.
Permit to Operate (PTO) 5CS-0001.PO001.DEFI.

Dear Mr. Cleland:

Violations were discovered by an inspector for the Livestock Environmental Permitting Program (LEPP) during one of the two inspections conducted each year at the facility. ODA determined that 5C's Farm Inc. failed to comply with Rules 901:10-2-08; 901:10-2-10; 901:10-2-14; and 901:10-2-16 of the Ohio Administrative Code (OAC).

I. VIOLATION: WATER WELL ANALYSIS

ODA has determined that OAC 901:10-2-08 (A)(4)(i); 901:10-2-08(A)(4)(ii); 901:10-2-16 have been violated. The LEPP inspector noted at the September 25, 2006 inspection that you had not conducted annual ground water well analysis with results recorded in the Operating Record.

CORRECTIVE ACTIONS REQUIRED

You have thirty days from the date on this letter within which you must correct this deficiency by collecting or obtaining the required samples, having the samples tested for total coliform and nitrates. Record the analytical results in the facility's Operating Record. OAC 901:10-2-16(A)(1)(a)(vii).

II. VIOLATION: MANURE CHARACTERIZATION

ODA has determined that OAC 901:10-2-10 has been violated. Specifically, OAC 901:10-2-10(C) requires that "at a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and per cent total solids."

The LEPP inspector noted at the September 25, 2006 inspections that you had not conducted the annual manure analysis as required by the PTO. There are a total of five separate samples due

prior to land application for this facility: the stormwater/leachate pond; both the south and north manure pits, solid manure from bedded barns and mortality compost.

CORRECTIVE ACTIONS REQUIRED

You have thirty days from the date on this letter within which you must correct this deficiency by collecting or obtaining the required samples; having the samples tested for total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and per cent total solids. Record the analytical results in the facility's Operating Record. OAC 901:10-2-16(A)(1)(b).

III. VIOLATION: MANURE STORAGE MONITORING AND INSPECTIONS

ODA has determined that OAC 901:10-2-08(A)(4)(f), 901:10-2-08(A)(4)(i), and OAC 901:10-2-16 has been violated. Specifically, OAC 901:10-2-8(A)(4) requires "at a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:"

"The liquid manure volume...by the depth marker." OAC 901:10-2-08(A)(4)(f).

"Conduct weekly inspections of storm water or diversion devices...channeling contaminate storm water to the manure storage pond or manure treatment lagoon and note proper operation and maintenance in the operating record." OAC 901:10-2-08(A)(4)(i).

The LEPP inspector noted at the September 25, 2006 inspection that you had not recorded the inspections in the Operating Record of the manure storage structures, which must be inspected on a weekly basis.

CORRECTIVE ACTIONS REQUIRED

You have thirty days from the date on this letter within which you must correct this deficiency by inspecting all manure storage structures on a weekly basis and placing the results in the facility's Operating Record. OAC 901:10-2-16(A)(1)(a)(iii) and 901:10-2-16(A)(1)(a)(iv).

IV. VIOLATION: MANURE APPLICATION RECORDS

ODA has determined that OAC 901:10-2-14 has been violated by not recording of all manure application: "The land application of manure at each land application site shall be conducted to utilize nutrients at agronomic rates, and to minimize nutrient runoff to waters of the state and shall be recorded in the operating record in accordance with rule 901:10-2-16 of the OAC."

The LEPP inspector noted at the September 25, 2006 inspection that you had not recorded the manure applications.

CORRECTIVE ACTIONS REQUIRED

You have thirty days from the date on this letter within which you must correct this deficiency by recording all the information required in OAC 901:10-2-16 pertaining to manure application. OAC 901:10-2-16(A)(1)(c).

To avoid a Notice of Deficiencies Resulting in Violation, please follow the instructions of the LEPP inspector and read your Inspection Report carefully. We take these violations very

seriously and anticipate your prompt correction of the aforementioned violations. If the subsequent inspection indicates the continuance of the violation noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Please feel free to direct any questions concerning this Warning Letter to the LEPP inspector. I look forward to your continuing cooperation in this matter.

Sincerely,



Kevin H. Elder

Executive Director, Livestock Environmental Permitting Program

Cc: Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Kristina Erlewine, Legal Counsel, Ohio Department of Agriculture
Chris Rodabaugh, LEPP Inspector
Defiance SWCD
Cathy Alexander, Ohio EPA



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
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October 11, 2006

Lochtefeld Enterprises
C/o Mark and Wilbert Lochtefeld
1085 Union City Road
Ft. Recovery, Ohio 45846

Certified Mail

Re: Warning Letter

Gentlemen:

Violations of Ohio Department of Agriculture rules were discovered during a complaint investigation by the Livestock Environmental Permitting Program (LEPP) staff on August 30, 2006. LEPP responded to a complaint of a possible manure discharge near the headwaters of Fort Creek, on the north side of Darke-Mercer Co. Line Road. The inspector learned that Lochtefeld Enterprises applied manure on August 16 and 17, 2006, with a Knight spreader to 95 acres of wheat stubble, incorporated the same day of application with manure incorporation in two different directions.

The inspector investigated four tiles that may have conveyed contamination to the point of discharge. The inspector found that two of the four tiles are not related to the application field used by Lochtefeld Enterprises. The application field is 728.75 feet from the eventual point of discharge. However, Mr. Lochtefeld demonstrated at the field and in the operating records that a setback of 102 feet had been maintained from the newly constructed waterway in the application field. On August 27 and 28, 2006, the area received 2.37 inches of rain. However, operating records confirmed the dates of manure application on August 16 and 17, 2006, well in advance of any 24-hour forecast of rain that would have prohibited application. Refer to Ohio Administrative Code 901:10-214(C)(6).

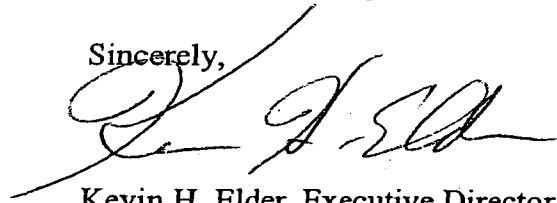
The LEPP inspector found that the manure application rate was exceeded. This is due, in part, to a discrepancy in the total number of acres available for the application, i.e., 88.7 acres or 95 acres. The inspector also found that Lochtefeld Enterprises did not accurately compute the rate of manure application. You are required to take into account nutrient rates and crop cover in order to determine the correct application rates. Enclosed please find a detailed copy of the inspection. Refer to OAC 901:10-2-14 for instructions on

phosphorus and nitrogen nutrient needs and Appendix A to this rule for instructions on how to use all appendices and tables in the rule.

Water samples were collected in the investigation and analyzed. LEPP does not conclude that Lochtefeld was the source of a manure discharge to waters of the state, due to the sample results and due to the length of time from manure application to date of a discovered discharge.

Finally, if you have any questions please contact the LEPP inspector, Gail Rodabaugh or me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Elder', written over a horizontal line.

Kevin H. Elder, Executive Director
Livestock Environmental Permitting Program

Enclosure

Cc: Gail Rodabaugh, LEPP Inspector
Mike Nishimura, ODNR-DSWC
Darke SWCD
Jerry Knapke, Ft. Recovery Equity
Cathy Alexander, Ohio EPA-Division of Surface Water w/attachment
Ryan Garrison, Mercer County Wildlife Officer w/attachment



Ohio Department of Agriculture



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Director Fred L. Dailey

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September 15, 2006

Certified Mail Return Receipt Requested

Sheldon Farms
9612 Twp. Road 64
Kenton, OH 43326

Kurt Sheldon
10736 St. Rt. 701
Kenton, OH 43626

Re: Warning Letter

Ohio EPA Permit #08-006-SW

Ohio Department of Agriculture Review Compliance Certificate
#SHEL-0001.RC001-HARD

Mr. Sheldon:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on August 28, 2006. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found that manure had been applied to field B4A, which has a soil test reading for P_2O_5 in excess of 150 parts per million Bray P1. This is a violation of Rule 901:10-2-14 (E)(3)(b) of the Ohio Administrative Code.

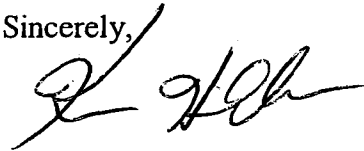
1. Need for annual manure analysis.

Rule 901:10-2-14 (E)(3)(b) of the Ohio Administrative Code (OAC):

"(b) Application of phosphorus shall not occur on land with soil tests over one hundred fifty parts per million Bray P1 or equivalent unless the owner or operator can demonstrate an alternative to the director through the use of the phosphorus index risk assessment procedure contained in appendix E Table 1 of this rule."

Our records show that prior to this most recent inspection, you were told at the August 4, 2005 and the January 26, 2006 inspections that manure could not be applied to field B4A. Your operating records showed that manure was applied to B4A on November 18, 2005 and April 12, 2006. To avoid a Notice of Deficiencies Resulting in Violation, please follow the instructions of the LEPP Inspector to not apply to field B4A or any other field over 150 parts per million or 300 pounds per acre P2O5. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the subsequent inspection indicates the continuance of the violation noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Elder', written over the word 'Sincerely,'.

Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer
Chris Rodabaugh, LEPP Inspector
Jennifer Tiell, Legal Counsel
Hardin County SWCD
Cathy Alexander, Ohio EPA



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September 7, 2006

Certified Mail Return Receipt Requested

Pieter Assen
Johannes Assen
8500 Yankeetown-Chenoweth Road
London, Ohio 43140

Permits ASS-0001.PI001.MADI and ASS-0001.PO001.MADI

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Assen Dairy, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Assen Dairy, LLC has failed to comply with Rules 901:10-2-04 and 901:10-2-08(A)(4)(a) of the Ohio Administrative Code (OAC).

I. FIRST VIOLATION

**A. FAILURE TO COMPLETE CONSTRUCTION AND MAINTAIN
STORMWATER AND LEACHATE**

ODA has determined that Assen Dairy, LLC failed to build and contain stormwater and leachate in a pond as required by Ohio Administrative Code Rule 901:10-2-04. In 2005, ODA reviewed and approved plans for the construction of a stormwater/leachate pond for your facility. Construction of the storage pond began but construction has since stopped. On June 6, 2006, Harry Kallipolitis, Ohio EPA, Division of Surface Water, Storm Water Program, observed a discharge coming from the feed storage and feed preparation area and discharging into an unnamed tributary. The Inspector from the Livestock Environmental Permitting Program (LEPP) visited the facility on June 19, 2006 and confirmed the discharge and temporary containment and corrective actions of the aforesaid discharge. By letter dated July 3, 2006, ODA required Assen Dairy, LLC to complete construction of the approved stormwater/leachate pond as soon as possible but no later than July 31, 2006. On August 23, 2006, a LEPP Inspector conducted a partial inspection of your facility and determined that Assen Dairy failed to comply.

B. CORRECTIVE ACTIONS REQUIRED

You have ten (10) days from the date on this letter within which you must correct these deficiencies by completing construction. On or after September 25, 2006 an inspector will inspect your facility to determine whether or not you are in compliance. If you are still not in compliance, ODA will consider proceeding with other enforcement options, including assessing a civil penalty.

C. PENALTY ASSESSMENT

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the OAC. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violations is medium level. The appropriate penalty in this matter will be \$1,000.00 per day beginning July 31, 2006, unless the deficiencies are corrected by the date of re-inspection or September 25, 2006.

II. SECOND VIOLATION

A. INSPECTIONS AND RECORDKEEPING

The LEPP Inspector also determined at the inspection on June 19, 2006 that Assen Dairy was in violation of Rule 901:10-2-08(A)(4) of the OAC. This rule requires the dairy to do all of the following:

- Inspect, monitor, or maintain the operating level of manure storage ponds so that the operating level does not exceed the maximum operating level specified in the permit's Manure Management Plan, plus one foot of freeboard. OAC 901:10-2-08(A)(4)(a) and 901:10-2-08(A)(4)(c);
- Inspect the liquid manure volume weekly and note liquid levels of manure in the Operating Record. OAC 901:10-2-08(A)(4)(f);
- Inspect storm water or diversion devices weekly and note proper operation and maintenance in the operating record. OAC 901:10-2-08(A)(4)(i); and
- Document actions taken to correct any of these deficiencies as a result of the inspections required. Deficiencies are to be corrected as soon as possible by the dairy and listed in the Operating Record. OAC 901:10-2-08(A)(4)(q).

By letter dated July 3, 2006, ODA required Assen Dairy, LLC to comply with these requirements as soon as possible but no later than July 31, 2006. On August 23, 2006, a LEPP Inspector conducted a partial inspection of your facility and determined that Assen Dairy continues to fail to comply with the rules cited

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter you must immediately correct these deficiencies by conducting the required inspections and recording the required information in the facility's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation.

C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low. Therefore, if you fail to comply with the corrective action required herein, the appropriate penalty in this matter will be \$150.00 per day beginning July 31, 2006, unless the deficiencies are corrected by the date of re-inspection or September 25, 2006.

If Assen Dairy fails to comply with any of the corrective actions required herein, Assen Dairy would be subject to the assessment of a civil penalty up to a total of \$69,000 based on a total of \$1,150 per day for 60 days, beginning July 31, 2006 and ending September 25, 2006. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Kristina Erlewine, Legal Counsel, Ohio Department of Agriculture
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Harry Kallipolitis, Ohio EPA-DSW, Central District Office
Madison County SWCD



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September 7, 2006

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Attention: Harry Palmer

Re: WARNING LETTER-CROTON LAYER NO. 4

Gentleman:

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. Paragraph 18 of the Consent Order requires ventilation fans installed in such a fashion that ventilated air from the building or section of the building housing the chickens will be directed onto the stored manure to enhance further drying.

The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Croton Layer Site No. 4 (OFL4-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. The IRCP contained in the PTO issued for OFE Layer Site No. 4 requires that OFE use fans to enhance manure drying. On a daily basis, the personnel responsible for water leaks and general insect activity inspections will also note any malfunctioning fans that may interfere with the operation. Fans will be run as long as necessary to control manure moisture levels and reduce insects.

An inspection by ODA of operating records maintained as required by the PTO at OFE Croton Layer No. 4 on June 28, 2006, showed that the odd-numbered barns and Barn No. 55A contained abundant to extreme levels of flies beginning the week of April 11, 2006 and continuing through the date of inspection, June 28, 2006. Fly spec count numbers

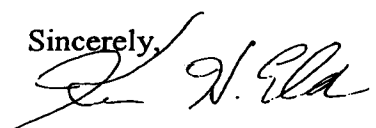
ranged from a low of 62 on May 3, 2006 to a high of 343 on May 31, 2006. As required by the PTO, OFE completed one action within 24 hours when fly spec counts were 50 – 74 and two actions when spec counts were greater than 74. These actions were recorded on the Fly Control Log in the facility operating record.

Nevertheless, the inspector also found that pit fans in all of the odd-numbered barns at Croton Layer Site No. 4 were disconnected, sitting on the floor, and/or covered by plastic sheets.

The Consent Order and the PTO authorize a hierarchy of OFE management to comply with the IRCP. The IRCP describes an array of responses to be use by OFE to manage manure moisture, i.e., responses are not limited to only use of insecticides. The fans that are disconnected, covered with plastic, and not in use must be used in the odd-numbered barns at Croton Layer Site No. 4 (with the exception of Barns 55 and 55A) to dry manure. OFE shall fix, repair, clean, reconnect, install, and use the fans to improve airflow and manure drying to less than 30% moisture in the manure. OFE shall develop fan placement configuration for the odd-numbered barns in the same manner as fan placement configurations used in the even numbered belt-battery barns located at Croton Layer No. 4.

Please feel free to direct any questions concerning this matter to either Jim Young or to me. I look forward to your continuing cooperation in this matter.

Sincerely,



Kevin H. Elder, Executive Director
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineering
Jennifer Tiell, ODA Legal Counsel
Kristina Erlewine, ODA Legal Counsel
Anthony L. Seegers, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kiracofe, Licking SWCD



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ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

Certified Mail Return Receipt Requested

August 18, 2006

Kurt Lausecker
Daylay Egg Farm, Inc.
11177 Twp. Rd. 133
PO Box 5
West Mansfield, OH 43358

Frank Zimmerer
Daylay Egg Farm, Inc.
11177 Twp. Rd. 133
PO Box 5
West Mansfield, OH 43358

Mark Meyer
Daylay Egg Farm, Inc.
11177 Twp. Rd. 133
PO Box 5
West Mansfield, OH 43358

RCC No.: FAR-0001.RC001-UNIO

Re: NOTICE OF DEFICIENCY RESULTING IN NONCOMPLIANCE-FARM 3

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Daylay Egg Farm, Inc. (Daylay) is hereby issued a Notice of Deficiency Resulting in Noncompliance (NOD). Kurt Lausecker and Frank Zimmerer are the owners and Mark Meyer is the operator of Daylay Egg Farm, Farm 3. ODA has determined that Daylay Egg Farm, Farm 3 has failed to comply with Rules 901:10-2-19(C)(2)(d) and 901:10-1-10(G) of the Ohio Administrative Code (OAC).

I. VIOLATION: UNAUTHORIZED MANURE STOCKPILES AND FAILURE TO COVER STOCKPILED MANURE

ODA has determined that Daylay Egg Farm, Farm 3 has failed to store manure undercover at all times as required by OAC Rule 901:10-2-19(C)(2)(d) and as required by the Insect and Rodent Control Plan (IRCP) of Daylay Farm 3's Review Compliance Certificate (RCC) No. FAR-0001.RC001-UNIO. As a result of a partial inspection conducted by ODA on April 17, 2006, Daylay was required as follows: "The area south of the manure storage barn must be cleaned up by June 1, 2006 to prevent a fly breeding area. It is being recommended to extend the concrete pad for good housekeeping measures in this area. All manure must be stored under roof or with a cover (tarp) within 48 hours of being unloaded at the manure storage barn." Mr. Meyer stated in a phone call placed to him on June 8, 2006 nothing had been done at

the manure storage barn as far as extending the concrete pad or putting stone in the rutted areas. Further partial inspections on July 14, 2006 and August 1, 2006 showed manure stored uncovered at the Farm 3 manure storage barn.

RCC FAR-0001.RC001-UNIO includes a Manure Management Plan (MMP) that authorizes manure storage capacity in a storage building for 131 days. Further, the MMP authorizes continual manure removal from the manure storage building for manure sale or for distribution and utilization. The RCC also includes an IRCP. The IRCP specifies that manure is stored undercover at all times. Daylay Farm 3 has violated OAC Rule 901:10-1-10(G), which states: "No person shall violate the terms and conditions of a review compliance certificate."

II. CORRECTIVE ACTIONS REQUIRED

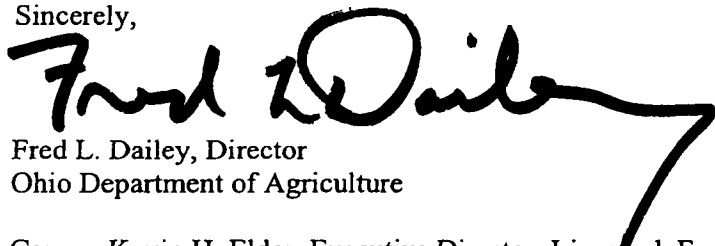
Daylay Farm 3 has 30 days from the date of this letter within which the owners or the operator must correct this deficiency by removing the uncovered manure from the facility, storing the manure undercover in the manure storage barn or by temporarily tarping the manure. If the manure is removed from the facility, records of amounts of manure removed from the facility must be kept. These records must be made available to the ODA Livestock Environmental Permitting Program Inspector.

After the thirty (30) day time period specified in this Notice has elapsed, an inspector will inspect your facility on or about September 19, 2006 to determine whether or not you are in compliance. If you are still not in compliance, ODA will consider proceeding with other enforcement options, including assessing a civil penalty.

III. PENALTY ASSESSMENT

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:1-5-04 of the OAC. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (E) and (H) of Rule 901:10-5-04 of the OAC to determine that this is first cited violation of the above identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violation is low. The appropriate penalty in this matter will be \$500.00 per week beginning on April 14, 2006, unless the deficiencies are corrected with thirty (30) days from the date on this letter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Gary Zwolinski, LEPP Engineer
Jennifer Tiell, Legal Counsel,
Kristina Erlewine, Legal Counsel
Anthony L. Seegers, Assistant Attorney General
Gail Rodabaugh, LEPP Inspector
Cathy Alexander, Ohio EPA
Mike Nishimura, ODNR-DSWC
Union SWCD



Ohio Department of Agriculture



Governor Bob Taft
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August 17, 2006

Eastwood Dairy, LLC
Dirk Winkel
9235 Wildman Road
South Charleston, Ohio 45368

Certified Mail Return Receipt Requested

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Eastwood Dairy

Dear Mr. Winkel:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Eastwood Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Eastwood Dairy has violated Permit to Operate (PTO) EAS-0001.PO001.CLAR. ODA has determined that Eastwood Dairy has failed to comply with Rules 901:10-2-08, 901:10-2-10, 901:10-2-15, 901:10-2-16, and 901:10-2-17(A) of the Ohio Administrative Code (O.A.C.).

I. FIRST VIOLATION: FREEBOARD/SAND SETTLING BASINS

A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 has been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(b) requires that "[t]he operating level of fabricated structures must not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-2-05(A)(2) and 901:10-2-05(A)(4) of the Administrative Code, plus an additional six inches of freeboard." O.A.C. 901:10-2-08(A) also requires that equipment and manure storage and treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and listed in the operating record.

During inspections on July 13, 17 and July 25, 2006, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) discovered that the two sand settling basins at Eastwood Dairy were within 3 inches from overtopping the walls and spilling out into the stormwater diversion ditches. The fact that manure was nearly overtopping the walls on July 13, 17 and July 25, 2006 demonstrates that Eastwood Dairy failed to maintain adequate storage capacity in the two sand settling basins. The LEPP inspector noted at all three inspections that the pumps in both sand settling basins were not functioning. The underground pipes from the basins to the manure storage ponds were both plugged with sand.

B. CORRECTIVE ACTIONS REQUIRED

You have thirty days from the date on this letter within which you must correct this deficiency by (1) repairing and restoring to full function, the automated pumping system in each sand settling

basin, and (2) removing all sand/solids from each sand settling basin and land applying the removed sands/soils correctly, so as to restore the function of the sand settling basins and the required amount of freeboard. Record the actions taken to repair the sand settling basins and pumps in your operating record. When the sand/solids are land applied, you must keep all the required application records for the sand/solids in your operating record. You must make these records available to the LEPP inspector.

During the last inspection on July 17, 2006, you indicated to the LEPP inspector that Eastwood Dairy would be hiring an applicator and determining when and how much manure to land apply. Please note that because you have not yet conducted the annual manure sampling required by O.A.C. 901:10-2-10(C), before land applying the sand/soils from the sand settling basins you must first collect a sample from each sand settling basin and have them analyzed for total nitrogen, ammonium nitrogen, organic nitrogen, phosphorus, potassium, and per cent total solids. O.A.C. 901:10-2-10(C) requires "at a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and per cent total solids." There are a total of six separate samples due prior to land application for this facility: the stormwater/leachate pond; manure storage pond (agitated); each of the two sand settling basin solids; compost; and drystack manure.

Also, because you have not conducted any soil testing since 2001, you will also have to complete the soil tests required under O.A.C. 901:10-2-13 for the fields on which you are going to land apply before doing the land application. Specifically, O.A.C. 901:10-2-13(D)(1) requires that a site that receives manure shall be soil tested, at a minimum, once every three years. Soil samples must be representative of the land application site with one composite soil sample representing no more than 25 acres. O.A.C. 901:10-2-13(C). Additionally, O.A.C. 901:10-2-13(E) requires results of the soil sampling events shall be recorded in the operating record in accordance with rule 901:10-2-16 of the O.A.C. and shall include the location of the soil sample collection site, the depth of the sample collected and the analysis.

C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Actions required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of \$800.00 for each day from the date of the first inspection (July 13, 2006) to the date of this Notice of Deficiencies letter (August 17, 2006), for a total of \$28,000.00. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

II. SECOND VIOLATION: WATER WELL ANALYSIS

A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08(A)(4)(I)(i) and 901:10-2-08(A)(4)(I)(ii) have been violated. O.A.C. 901:10-2-08(A)(4)(I)(i) requires you to conduct annual sampling and analysis of ground water from the Eastwood Dairy drinking water well, and O.A.C. 901:10-2-08(A)(4)(I)(ii)

and your PTO requires biannual sampling from the ground water monitoring well at Eastwood Dairy. Results of the samples must be recorded in the operating record.

The LEPP inspector noted at the May 3 and July 17, 2006 inspections that you have not collected or had analyzed the required annual drinking water well sample or a biannual ground water monitoring well sample. There have not been any recent samples collected at Eastwood Dairy since a well sample in 2003.

B. CORRECTIVE ACTIONS REQUIRED

You have thirty days from the date on this letter within which you must correct this deficiency by completing the following: (1) collect one sample from the drinking water well and one sample from the ground water monitoring well at Eastwood Dairy, (2) have the samples analyzed by a laboratory for total coliform and nitrate, and (3) record the analytical results in the facility's Operating Record.

C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Actions required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of \$800.00 for each day from the date of the first inspection (May 3, 2006) to the date of this Notice of Deficiencies letter (August 17, 2006), for a total of \$84,800.00. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

III. THIRD VIOLATION: VEGETATIVE COVER

A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 has been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(j) requires you to inspect the protective vegetative cover to determine that cover is maintained on all disturbed areas (lagoon or pond embankments, berms, pipe runs, erosion control areas, etc.) O.A.C. 901:10-2-08(A)(4)(q) states that "[d]eficiencies are to be corrected as soon as possible and listed in the operating record."

The LEPP inspector noted at the May 3, July 17 and July 25, 2006 inspections that the inner and outer banks of the manure storage pond and storm water pond and the sides of the storm water diversion ditches had very little vegetation established. Soil erosion was taking place in these areas. No records of either inspections of the vegetative cover or of any efforts to correct the situation have been maintained.

B. CORRECTIVE ACTIONS REQUIRED

You have thirty days from the date on this letter within which you must correct this deficiency by regrading eroded areas of the site and reestablishing vegetation on the inner and outer banks of

the manure storage pond and storm water pond and the sides of the storm water diversion ditches. You must record all corrective actions in Eastwood Dairy's operating record.

C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Actions required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of \$800.00 for each day from the date of the first inspection (May 3, 2006) to the date of this Notice of Deficiencies letter (August 17, 2006), for a total of \$84,800.00. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

IV. FOURTH VIOLATION: INSPECTIONS/RECORD KEEPING

A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 and O.A.C. 901:10-2-16 have been violated. Specifically, O.A.C. 901:10-2-08(A)(4) provides, in pertinent part, that the operating level of the manure storage and treatment facilities must be inspected, monitored, maintained, and documented in the operating record. Paragraph (A) of O.A.C. 901:10-2-16 provides, in pertinent part, that an owner or operator shall maintain an operating record, and that the operating record shall record and document the following information:

- (a) The manure storage or treatment facility. Records required by O.A.C. 901:10-2-08, including:
 - 1) Measurements of manure volume and the depth of liquid manure in manure storage or treatment facilities by the depth marker;
 - 2) Records of inspections of the structural integrity and vegetative management systems of the manure storage or treatment facility, taken at the interval specified in your manure management plan;
 - 3) Records of measurements of storage capacity remaining in the manure storage and treatment facility, based on inspections taken at the interval specified in your manure management plan;
 - 4) Records of inspections of stormwater conveyances and diversion devices;
 - 5) Records of inspections of the protective vegetative cover that is maintained on all disturbed areas (pond embankments, berms, pipe runs, erosion control areas, etc.);
 - 6) Records of groundwater sampling and analysis. Your permit includes annual well water samples and biannual groundwater monitoring well samples that must be completed;
 - 7) Records required in O.A.C. 901:10-2-19 for the insect and rodent control plan;
 - 8) Records of daily inspections of water lines;

- 9) Records of actions taken to correct any deficiencies found as a result of inspections conducted in the production area;
 - 10) Records of the date, time, and estimated volume of any overflow or discharge from the production area;
- (b) Manure characterization records. Manure characterization data, test methods, results, and other information as required in O.A.C. 901:10-2-10(E).
- (c) Land application site records. Records for each land application site as described on a soil survey map, including:
- 1) Records of land application equipment that Eastwood Dairy has access to;
 - 2) A description of acres of land for land application of manure, or in the alternative, records of a distribution and utilization plan;
 - 3) Land application sites as described on a soil survey map;
 - 4) All soil tests within the last five years;
 - 5) Records of the cropping schedule for each land application site for the past year, and anticipated crops for the current year and for the next two years after the current year;
 - 6) Targeted crop yields for each land application site;
 - 7) Actual yields, if available.

The LEPP inspector noted at the May 3 and July 17, 2006 inspections that you had no records for storage capacity or manure volume, and that you were not keeping an operating record. At the May 3 inspection you were given a binder with all of the required operating records that were tabbed and indexed to make record keeping easier for you. However you had not begun keeping the required records at the time of the July 17, 2006 inspection.

B. CORRECTIVE ACTION REQUIRED

You have seven days from the date on this letter within which you must correct this deficiency by conducting the required inspections and recording the required information listed in O.A.C. 901:10-2-08(A)(4) and 901:10-2-16 in Eastwood Dairy's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation.

C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as minor or Category III, and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Action required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of \$200.00 for each day from the date of the first inspection (May 3, 2006) to the date of this Notice of Deficiencies letter (August 17, 2006), for a total of \$21,200.00. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

V. FIFTH VIOLATION: EMERGENCY RESPONSE NOTIFICATION (Previous violation)

A. VIOLATION

OAC 901:10-1-10(G) requires Eastwood Dairy to comply with the terms and conditions contained in the permits issued to Eastwood Dairy by ODA. In a previous Notice of Deficiencies letter dated July 7, 2006, Eastwood Dairy was required to follow its Emergency Response Plan by posting signs at the facility by July 17, 2006, advising employees of the following:

- 1) Emergency response and contact information for those that need notified during an emergency;
- 2) Procedures to be followed in the event of a manure spill or discharge to waters of the state;
- 3) Areas of the facility where potential spills can occur and their accompanying surface and subsurface drainage points.

During inspections on July 17 and July 25, 2006, the LEPP inspector noted that no signs had been posted.

B. CORRECTIVE ACTION REQUIRED

You have seven days from the date on this letter within which you must correct this deficiency by posting signs, containing the above required information, at Eastwood Dairy.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determining the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are second cited violations with the category of seriousness of the violations as minor or Category III, and the gravity of the violations as low. Therefore, if Eastwood Dairy fails to comply with any of the Corrective Action required above, Eastwood Dairy would be subject to the assessment of a civil penalty in the amount of \$400.00 per day for each day from the date of the first inspection (July 17, 2006) to the date of this Notice of Deficiencies letter (August 17, 2006), for a total of \$12,400.00. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

VI. SIXTH VIOLATION: MORTALITY COMPOST

A. VIOLATION

OAC 901:10-1-10(G) requires Eastwood Dairy to comply with the terms and conditions contained in the permits issued to Eastwood Dairy by ODA. The Mortality Management Plan contained in the PTO issued to Eastwood Dairy and OAC 901:10-2-15 and 901:10-2-16(A)(1)(f) require Eastwood Dairy to use a licensed rendering service as the method for dead livestock disposal. Eastwood's Mortality Management Plan also indicates that a contract will be negotiated to remove the dead animals in a timely manner as outlined in the Rendering Law for the State of

Ohio. The contract shall be in place prior to the dairy becoming operational. The animals are to be transported from the facility within 24 hours of their death.

On May 3, 2006 during the first of two annual facility inspections, the LEPP inspector noted that Dirk Winkel was having difficulty getting renderers to come to Eastwood Dairy on a timely basis and getting renderers that are nearby. Due to the difficulty with renderer accessibility and reliability, Mr. Winkel began composting the mortality on the sand dewatering pad. It was also noted neither that Dirk Winkel nor any of Eastwood Dairy's employees have a Composting Certificate. Under O.A.C. 901:10-2-15, composting is an acceptable method to dispose of mortality, but the composting must be done in compliance with Ohio Revised Code 1511.022, which requires a Composting Certificate to be obtained before composting. Also, the change from rendering to composting must be noted in the Eastwood Dairy operating record. Mr. Winkel was warned during the May 3, 2006 inspection that a Composting Certificate is required to compost and that there was an opportunity for certification during the CLM training session held June 29-30, 2006 in Auglaize County. On several occasions following the facility inspection, Mr. Winkel was reminded of the upcoming CLM training:

- On May 31, 2006, reminded during a site visit by the LEPP inspector.
- On June 7, 2006, via phone conversation with the LEPP inspector.
- On June 31, 2006, via phone voice mail message left by a second LEPP inspector. At 3:15 p.m., the LEPP inspector received a phone call from Mr. Winkel asking directions to the Compost Training Session held in conjunction with the CLM training in Wapakoneta, which would most likely have been over by the time Winkel arrived late that afternoon.

On July 17, 2006, at a follow-up inspection, Eastwood Dairy was continuing to compost mortality without certification. There were no records at the inspection.

B. CORRECTIVE ACTION REQUIRED

Within thirty days, Eastwood Dairy is required to comply with the Mortality Management Plan in its PTO and OAC 901:10-2-15. Eastwood Dairy shall do one of the following:

1. Enter into a written contract with a renderer to manage Eastwood's mortality;
2. Dirk Winkel or another Eastwood employee must have his Composting Certificate; or
3. Enter into a written contract with a certified composter to manage Eastwood's mortality.

If Eastwood Dairy wishes to compost livestock mortality, then the following rules apply:

ORC 1511.022 requires that any person who owns or operates an agricultural operation, or owns the animals raised by the owner or operator of an agricultural operation, and who wishes to conduct composting of dead animals resulting from the agricultural operation shall do both of the following:

- (1) Participate in an educational course concerning composting conducted by the Ohio Cooperative Extension Service and obtain a certificate of completion for the course;
- (2) Use the appropriate method, technique, or practice of composting established in rules adopted under division (E)(10) of section 1511.02 of the ORC.

Eastwood Dairy must also note that it is changing its Mortality Management Plan from rendering to composting in its operating record, as an operational change under O.A.C. 901:10-1-09.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determining the amount of

penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II and the gravity of the violations as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Actions required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of \$800.00 for each day from the date of the first inspection (May 3, 2006) to the date of this Notice of Deficiencies letter (August 17, 2006), for a total of \$84,800.00. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

By August 30, 2006, and again by September 17, 2006, a LEPP inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. If Eastwood Dairy, LLC and Mr. Dirk Winkel fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Gary Zwolinski, LEPP Engineer
Christine Pence, LEPP Inspector
Jennifer Tiell, Kristina Erlewine Legal Counsel
Anthony L. Seegers, Assistant Attorney General
George McConkey, Clark SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

Administrative Offices
8995 East Main Street • Reynoldsburg, Ohio 43068-3399
Phone: (614) 466-2732 • Fax: (614) 466-6124
ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

Certified Mail Return Receipt Requested

August 3, 2006

JP Poultry
C/o Mr. and Mrs. Jim Fleck
8704 State Route 274
New Bremen, OH 45869

Re: **NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE-
CONSTRUCTION OF SECOND UNAUTHORIZED STRUCTURE FOR CATTLE
FEED BARN**

Dear Mr. Fleck:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), JP Poultry is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that JP Poultry has failed to comply with ORC Section 903.04 and Ohio Administrative Code (OAC) rule 901:10-1-09. JP Poultry and Jim and Pam Fleck were issued Review Compliance Certificate (RCC) JPPO-0001.RC001-MERC for an existing "Concentrated Animal Feeding Facility" (CAFF), as defined by ORC Section 903.01(E), on April 9, 2004 by Order 2004-066.

**I. FIRST VIOLATION - ADDING CATTLE HOUSING AND RELATED
MANURE STORAGE FACILITY WITHOUT A PERMIT TO INSTALL.**

A. VIOLATION

ODA has determined that OAC 901:10-1-09 has been violated. Specifically, the existing CAFF was modified without first notifying ODA of the changes and obtaining authorization. OAC 901:10-1-09(A). These changes to the RCC constitute a modification as defined in OAC 901:10-1-01 (FFF) or a major operational change. OAC 901:10-1-09(F). Therefore, changing the facility to include the new cattle feed barn required ODA approval.

While driving by the facility located on SR 274 on June 7, 2006, an inspector with ODA Livestock Environmental Permitting Program (LEPP) discovered a new and additional

barn was being constructed¹. On June 12, 2006, the LEPP inspector conducted an inspection at JP Poultry during which Mr. Fleck explained that JP Poultry planned to deed ten (10) acres of the CAFF and the new cattle feed barn to Josh Fleck. Thereafter, JP Poultry planned to lease this acreage and the new cattle feed barn from Josh Fleck. In a letter dated June 21, 2006, the LEPP inspector advised as follows:

"Animal feeding facility" means a lot, building, or structure where both of the following conditions are met:

(1) Agricultural animals have been, are, or will be stabled or confined and fed or maintained there for a total of forty-five days or more in any twelve-month period.

(2) Crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure.

"Animal feeding facility" also includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure originating from agricultural animals in the lot, building, or structure or a production area is or may be applied.

Two or more animal feeding facilities under common ownership shall be considered to be a single animal feeding facility for the purposes of this chapter if they adjoin each other or if they use a common area or system for the disposal of manure. ORC 903.01(B)

The location of the land upon which the cattle feed barn is constructed is within the production area of the existing CAFF. The proposed operations at the cattle feed barn will be managed as part of the operations of the existing CAFF and managed by the owner or operator of the existing CAFF. Accordingly, ODA finds that the land and the cattle feed barn meet the criteria of ORC 903.01(B) and ORC 903.01 (E).

B. CORRECTIVE ACTIONS

JP Poultry is required to submit an application describing changes to the CAFF within 60 days of receipt of this Notice, to the attention of Kevin Elder, Executive Director, Livestock Environmental Permitting Program, at 8995 East Main Street, Reynoldsburg, Ohio 43068. LEPP will determine if the proposed changes are either a modification or a major operational change and will notify JP Poultry of its determination. Thereafter, JP Poultry shall have 60 days to respond to the notice from LEPP and to also respond in writing to any technical comments made by LEPP on the application submitted and reviewed by LEPP. In the event that LEPP performs a second review of the application,

¹ On June 21, 2006, a Notice of Hearing was issued to JP Poultry for failure to comply with a NOD issued on May 23, 2005 for unauthorized construction of a new manure storage barn. The violations for this NOD are for a second building referred to as the "cattle feed barn."

JP Poultry shall have an additional 30 days to respond to comments made by LEPP in order to obtain the necessary authorization as expeditiously, as possible.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(D), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with OAC 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed OAC 901:10-5-04(D). Based upon this review, ODA has determined that the violation cited herein is the second cited violation with the category of seriousness of the violation as Category I, and the gravity of the violation as medium.

Therefore, if JP Poultry and Jim and Pam Fleck fail to comply with the corrective actions, including failure to follow the schedule required for **Corrective Actions**, above, JP Poultry and Jim and Pam Fleck will be subject to the assessment of a civil penalty in the amount of \$5,000.00 for each day after the new barn was discovered (June 7, 2006) until the date of this Notice of Deficiencies letter (July 12, 2006) for violation of ORC Section 903.02. JP Poultry and Jim and Pam Fleck may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the **Corrective Actions**, as well as the potential for escalated enforcement.

II. SECOND VIOLATION-VIOLATING THE RCC AUTHORIZED CAPACITY

A. VIOLATION

The RCC issued to JP Poultry authorizes the facility to operate with 200 beef cattle, 410,000 laying hens, and only those manure storage facilities that were in existence at the time ODA issued the RCC JPPO-0001.RC001-MERC. By constructing a new cattle feed barn for approximately 200 additional cattle, JP Poultry and Jim and Pam Fleck have violated the RCC and OAC 901:10-1-10(G).

B. CORRECTIVE ACTIONS

JP Poultry and Jim and Pam Fleck shall not stock the new cattle feed barn until JP Poultry and Jim and Pam Fleck comply with the **Corrective Actions** specified in **I.B.**, above, and comply with OAC 901:10-2-01(B) (2). Specifically, JP Poultry and Jim and Pam Fleck are prohibited from stocking the cattle feed barn until authorized by the Director or the Director's representative.

Not later than August 31, 2006, a LEPP inspector will re-inspect JP Poultry to determine compliance with these Corrective Actions.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(D), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with OAC 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also

reviewed OAC 901:10-5-04(D). Based upon this review, ODA has determined that the violation cited herein is the second cited violation with the category of seriousness of the violation as Category I, and the gravity of the violation as minor.

Therefore, if JP Poultry and Jim and Pam Fleck fail to comply with the corrective actions, including failure to follow the schedule required for **Corrective Actions**, above, JP Poultry and Jim and Pam Fleck will be subject to the assessment of a civil penalty in the amount of \$800 for each day after the new barn was discovered (June 7, 2006) until the date of this Notice of Deficiencies letter (July 12, 2006) for violation of ORC Section 903.02. JP Poultry and Jim and Pam Fleck may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the **Corrective Actions**, as well as the potential for escalated enforcement.

III. THIRD VIOLATION- VIOLATING THE RCC MANURE MANAGEMENT PLAN AND INSECT AND RODENT CONTROL PLAN

A. VIOLATION

ODA has also determined that ORC Section 903.04 has been violated. JP Poultry and Jim and Pam Fleck are operating a CAFF in violation of the RCC. The RCC merged and became part of the PTI previously issued by the Ohio Environmental Protection Agency (OEPA). ORC Section 903.04(G). A facility that is issued an RCC, must comply with the OEPA issued PTI as amended by the RCC. ORC Section 903.04(I).

The RCC issued to Jim and Pam Fleck and JP Poultry authorized JP Poultry to continue operating based on findings made by the Director that the Facility is "of correct design capacity; that the Facility is in compliance with the PTI issued by the Ohio Environmental Protection Agency; that the Facility's Manure Management Plan, Insect and Rodent Control Plan, and Mortality Management Plan all conform to best management practices; and that the Facility is operated in a manner that protects the waters of the state and minimizes the presence and negative effects on insects and rodents at the facility and in surrounding areas." (See Order 2004-066 at 11)

By constructing the new cattle feed barn without authorization from ODA, the RCC does not contain information that reflects current operating conditions at JP Poultry, including, but not limited to the following:

- 1) The RCC does not have a Manure Management Plan that specifies the frequency of inspections to be conducted at all manure storage and treatment facilities, including the new cattle feed barn at JP Poultry, as required by OAC 901:10-2-08.
- 2) The RCC has not had an Insect and Rodent Control Plan submitted that specifies management controls for all manure and storage and treatment facilities, including the new cattle feed barn, as required by OAC 901:10-2-19.

B. CORRECTIVE ACTIONS

JP Poultry and Jim and Pam Fleck are required to record operational changes to the operating record as required by OAC 901:10-2-16(A)(1)(a) and (b) to document compliance with OAC 901:10-2-08 and with OAC 901:10-2-19. JP Poultry and Jim and Pam Fleck shall submit a copy of operational changes to demonstrate compliance in order to correct violations of ORC Section 903.04. A copy of operational changes shall be submitted within 60 days of receipt of this Notice, to the attention of Kevin Elder, Executive Director, Livestock Environmental Permitting Program, at 8995 East Main Street, Reynoldsburg, Ohio 43068.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(D), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with OAC 901:10-5-04. In determining of the amount of penalty to be assessed for these violations, ODA has also reviewed OAC 901:10-5-04(D). Based upon this review, ODA has determined that the violations cited herein are the second cited violations with the category of seriousness of the violations as Category III, and the gravity of the violations as low.

Therefore, if JP Poultry and Jim and Pam Fleck fail to comply with the corrective actions, Jim and Pam Fleck and JP Poultry will be subject to the assessment of a civil penalty in the amount of \$200 for each day after the new barn was discovered (June 7, 2005) until the date of this Notice of Deficiencies letter (July 12, 2006) for violation of ORC Section 903.04. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the **Corrective Actions**, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Andy Ety, LEPP Engineer
Gail Rodabaugh, LEPP Inspector
✓ Jennifer Tiell, Legal Counsel
Kristina Erlewine, Legal Counsel
Anthony L. Seegers, Assistant Attorney General
Cathy Alexander, Ohio EPA
Mike Nishimura, ODNR-DSWC
Mercer SWCD
File



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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Phone: (614) 466-2732 • Fax: (614) 466-6
ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

July 14, 2006

Donald Hershey
Ohio Fresh Eggs LLC
11212 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Re: Director's Notice of Deficiencies Resulting in Noncompliance-Goshen Pullet No. 5-(OFGO-0001.PO001.HARD)

Gentleman:

Pursuant to the Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Goshen Pullet No. 5. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraphs 8, 30.a, 30.c, and 30.d of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99-CV-756.

I. VIOLATION: FAILURE TO MAINTAIN 30% MOISTURE OR LESS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN

A. VIOLATION

OAC 901:10-1-10(G) and Paragraphs 8, 30.a, 30.c, and 30.d of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Goshen Pullet Site No. 5 (OFGO-0001.PO001.HARD) requires that OFE maintain 30% moisture or less in its manure (as sampled on a quarterly basis) in order to reduce the presence of insects. During complaint investigations beginning on June 2,

2006, ODA determined that from at least June 2, 2006 through July 10, 2006, OFE has exceeded the 30% manure moisture level in Barns Nos. 2, 4, 5, 6 and 8.

OFE's IRCP requires that manure be dried as rapidly as possible and be kept dry in order to suppress fly and fly larval development. Inspections at OFE Goshen Pullet No. 5 on June 2, June 16, June 26 and July 10, 2006 showed that the conditions in these barns were promoting fly breeding and extreme to abundant levels of flies and larvae because the manure was not being dried as rapidly as possible as required by the permit due to the extended period of time that pullets were housed in the barns such that the pullets were mature and laying eggs. Since OFE has no egg gathering and collection equipment at OFE Goshen Pullet No. 5, all eggs produced dropped into manure and slowed the drying of fresh manure and contributed to increased manure moisture.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE Goshen Pullet No. 5 is required to immediately take appropriate measures to control flies in Barn Nos. 2, 4, 5, 6, and 8. Appropriate measures include the following:

- a. Move mature pullets/layers to laying facilities immediately upon receipt of this letter; and
- b. Take measures to dry affected manure, including use of lime and pit fans.

By July 21, 2006, a LEPP Inspector will re-inspect the facilities to determine if the fly levels are reduced to "few" or "none."

C. PENALTY ASSESSMENT

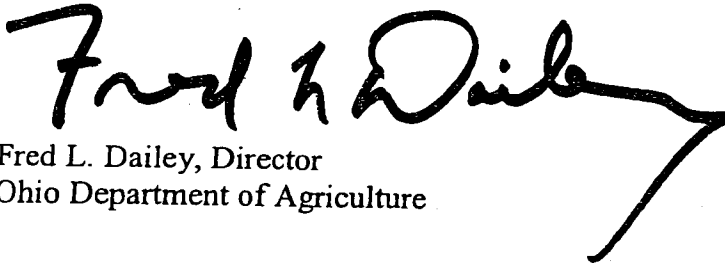
Pursuant to OAC 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first-cited violations with the category of seriousness of the violations as major Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of to \$1,000.00 per week for 49 days or 7 weeks for a total of \$7,000. All violations have the potential for escalated enforcement.

By July 21, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty and the potential for escalated enforcement. We take

these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred L. Dailey", with a long, sweeping horizontal stroke extending to the right.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristina Erlewine, Legal Counsel, Ohio Department of Agriculture
Anthony L. Seegers, Assistant Attorney General
Chris Rodabaugh, LEPP Inspector
Cathy Alexander, Ohio EPA
Howard Lyle, Hardin SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: www.state.oh.us/agr/ • e-mail: agri@mail.agri.state.oh.us

July 12, 2006

Park Farms, Inc.
C/o Scott Stephens
1925 30th Street N.E.
Canton, Ohio 44705

Certified Mail

Re: Warning Letter: Bird numbers at facilities

Dear Mr. Stephens:

In review of the inspection reports for inspections conducted the end of April, it has been brought to my attention that several of the facilities are stocking birds in exceedance of the allowable number of birds by 10% or more as authorized in the Permits to Operate (PTO). The maximum number of animals allowed in the permits for the ten barn facilities is 170,000 broilers and 135,000 broilers for the five barn facilities. Several of the ten barn facilities showed stocking in exceedance of 187,000 (a 10% exceedance), with actual bird numbers now at 189,000 broilers. Several of the five barn facilities showed stocking in exceedance of 148,500 (a 10% exceedance) with actual bird numbers of 150,000 broilers. The affected facilities are the following:

- o Beeson East Farm, Inc. (189,459),
- o St Peters Church Farm, Inc. (189,251), and
- o General Poultry, Inc. (153,507)

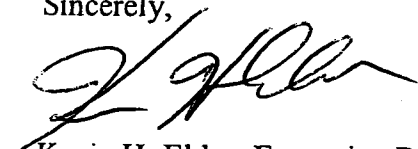
Park Farms is required to submit to ODA a request for a permit modification if Park Farms decides to expand the design capacity to the bird numbers currently in use at these three facilities. At a minimum, an application for proposed permits modification will require Park Farms to accurately state the new flock size in the permits and to modify the Manure Management Plans to show changes made in manure storage by balancing harvest weight differences from the 4.9 lb. birds when the PTOs were issued and the 3.7 lb. birds currently being produced. If a balance of the lowered harvest weight and the reduction in manure output remain within the parameters of the Manure Management Plan of the current PTOs then the formal changes to the PTOs may be minimal.

If Park Farms decides to modify its permits for these facilities, nothing in this letter shall be interpreted to prevent the Director from an enforcement action while any action to

change permits is pending. If you have any questions or concerns, please feel free to contact my attorney, Jenny Tiell, at (614) 387-0912.

Should you have any questions feel free to call me at 614-387-0469.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Elder', written over a horizontal line.

Kevin H. Elder, Executive Director
Livestock Environmental Permitting Program

Cc: Jenny Tiell/Kristina Erlewine – ODA Legal Counsel
Jim Young- LEPP Inspector
Andy Ety – ODA Engineer
File



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

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July 12, 2006

Donald Hershey
Ohio Fresh Eggs LLC
11212 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Re: **Warning Letter: Marseilles Layer Site No. 6 (OFMA-0001.PO001.WYAN).**

Gentlemen:

Violation of Ohio Department of Agriculture laws and rules was discovered during a complaint investigation by my staff on June 26, 2006. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found violations of Ohio law surrounding your operations. These violations include the following:

1. Need to maintain distance of 300 feet as setback between the stockpile location and waters of the state.

Rule 901:10-2-14 of the Ohio Administrative Code (OAC) provides as follows at Appendix A Table 2:

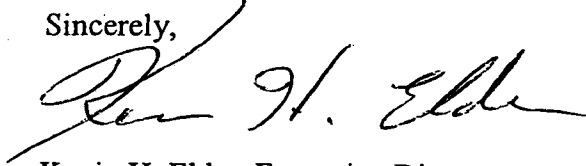
All land applications and setbacks of manure shall comply with restrictions in the appendix.

Waters of the state: Setback for Stockpiles: 300 feet

The investigation showed that manure had been stockpiled in a field located at the south side of Township Highway 67 as of June 26, 2006 at 186 feet from a roadside ditch that conveys water to waters of the state.

Please assure that at that the items noted in this letter are prevented in future manure stockpiles or manure applications. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If any follow-up inspection indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin H. Elder". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Kevin H. Elder, Executive Director
Livestock Environmental Permitting Program

CC: Chris Rodabaugh, LEPP Inspector

✓ Jennifer Tiell/Kristina Erlewine, LEPP Legal Counsel

Cathy Alexander— Ohio EPA

Mike Nishimura — ODNR

Howard Lyle, Hardin SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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July 7, 2006

Eastwood Dairy, LLC
Dirk Winkel
9235 Wildman Road
South Charleston, Ohio 45368

Certified Mail Return Receipt Requested

Re: Director's Notice of Deficiencies Resulting in Noncompliance:
Eastwood Dairy

Dear Mr. Winkel:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Eastwood Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Eastwood Dairy has violated Permit to Operate (PTO) EAS-0001.PO001.CLAR. ODA has determined that Eastwood Dairy has failed to comply with Rules 901:10-1-10(G) and 901:10-2-17(A)(4) of the Ohio Administrative Code (OAC).

I. VIOLATION: EMERGENCY RESPONSE NOTIFICATION

OAC 901:10-1-10(G) requires Eastwood Dairy to comply with the terms and conditions contained in the permits issued to Eastwood Dairy by ODA. The Emergency Response Plan contained in the PTO issued to Eastwood Dairy and OAC 901:10-2-17 requires that Eastwood Dairy notify ODA of manure spills as soon as possible but in no case more than twenty-four hours following first knowledge of the occurrence of the discharge or manure spill, the approximate amount and characteristics of the discharge, the waters of the state affected by the discharge (if any), the circumstances of the discharge or spillage, and the persons with knowledge of and responsibility for cleanup.

On June 1, 2006, the LEPP Engineer found that there had been spillage from the manure sand-settling pit located on the western side of the facility. The manure had spilled into the storm water diversion ditch where it had been contained. In addition, the eastern sand-settling pit was observed to be exceeding the minimum freeboard requirements of six inches plus the operating level approved in the PTO's Manure Management Plan. At no time did Eastwood Dairy notify ODA of the manure spill. By letter dated June 13, 2006, Kevin Elder, Executive Director, Livestock Environmental Permitting Program, required Eastwood Dairy to take corrective actions in order to return to compliance. By June 8, 2006, Eastwood Dairy corrected deficiencies in freeboard maintenance at both the eastern

and the western sand-settling pits located at the facility. However, ODA has not received a manure spill report as required by OAC 901:10-2-17(A)(4).

II. CORRECTIVE ACTION REQUIRED

Eastwood Dairy is required to comply with the Emergency Response Plan in its PTO and OAC 901:10-2-17(A)(4). By July 17, 2006, Eastwood Dairy shall submit a written report to ODA-LEPP, in a letter form, that shall include the following:

- 1) The times at which the spill occurred and was discovered,
- 2) The approximate amount and characteristics of the discharge or spill,
- 3) The waters of the state affected by the discharge or spill (if any),
- 4) The circumstances that created the discharge or spillage,
- 5) The names and telephone numbers of persons having knowledge of the discharge or spill,
- 6) Those steps taken to clean up the discharge or spill,
- 7) The names and telephone numbers of those persons responsible for the cleanup.

In addition, by July 17, 2006, Eastwood Dairy shall post signs advising employees of the following:

- 1) Emergency response and contact information for those that need notified during an emergency;
- 2) Procedures to be followed in the event of a manure spill or discharge to waters of the state;
- 3) Areas of the facility where potential spills can occur and their accompanying surface and subsurface drainage points.

In the future, Eastwood Dairy shall notify ODA of manure spills as soon as possible, but in no case more than twenty-four hours following the first knowledge of the occurrence of the discharge or manure spill.

III. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determining the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if Eastwood Dairy fails to comply with any of the corrective actions required herein, Eastwood Dairy would be subject to the assessment of a civil penalty in the amount of \$800 per day and the potential for escalated enforcement.

If Eastwood Dairy fails to comply with any of the corrective actions required herein, Eastwood Dairy would be subject to the assessment of a civil penalty up to a total of \$37,600, based on a total of \$800 per day for 47 days, beginning June 1, 2006 and ending July 17, 2006. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Fred L. Dailey". To the right of the signature, there are initials "ktw" also written in cursive.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Gary Zwolinski, LEPP Engineering
Jennifer Tiell/Kristina Erlewine, Legal Counsel, Ohio Department of Agriculture
Anthony L. Seegers, Assistant Attorney General
Christine Pence, LEPP Inspector
Harry Kallipolitis, Ohio EPA, DSW, Central District Office
Cathy Alexander, Ohio EPA
Clark SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: www.state.oh.us/agr/ • e-mail: agri@mail.agri.state.oh.us

July 3, 2006

Pieter Assen
Johannes Assen
8500 Yankeetown-Chenoweth Road
London, Ohio 43140

Certified Mail Return Receipt Requested

Re: Warning Letter: Assen Dairy

Gentlemen:

I am writing to you as a result of a partial inspection conducted by my staff on June 19, 2006. This partial inspection was conducted in response to a discharge noted and observed by Ohio EPA on June 6, 2006. At that time Harry Kallipolitis, Ohio EPA, Division of Surface Water, Storm Water Program, observed a discharge coming from the feed storage and feed preparation area and discharging into an unnamed tributary. The Inspector from the Livestock Environmental Permitting Program (LEPP) visited the facility to confirm the discharge and the containment and corrective actions of the aforesaid discharge.

In 2005, ODA reviewed and approved plans for the construction of a storm water/leachate pond for your facility. Construction of this storage pond has begun but construction has since stopped. You are required to complete construction of the approved storm water/leachate pond as soon as possible but no later than July 31, 2006.

Assen Dairy is in violation of Rule 901:10-2-04 of the Ohio Administrative Code (OAC) that requires facilities to be built to contain and store storm water and leachate. Assen Dairy is also in violation of Rule 901:10-2-08(A)(4) of the OAC. This rule requires the dairy to do the following:

- Inspect, monitor, or maintain the operating level of manure storage ponds so that the operating level does not exceed the maximum operating level specified in the permit's Manure Management Plan, plus one foot of freeboard. OAC 901:10-2-08(A)(4)(a) and 901:10-2-08(A)(4)(c).
- Inspect the liquid manure volume weekly and note liquid levels of manure in the Operating Record. OAC 901:10-2-08(A)(4)(f).

Warning Letter: Assen Dairy
July 3, 2006
Page 2

- Inspect storm water or diversion devices weekly and note proper operation and maintenance in the operating record. OAC 901:10-2-08(A)(4)(i).
- Document actions taken to correct any of these deficiencies as a result of the inspections required. Deficiencies are to be corrected as soon as possible by the dairy and listed in the Operating Record. OAC 901:10-2-08(A)(4)(q).

The requirements listed above are also required for compliance with the NPDES Permit for your facility.

Finally, I advise you that these requirements for construction of a storm water/leachate pond for your facility are all requirements of federal rules enforced by the United States Environmental Protection Agency. My staff and I will work with you to answer any questions you may have about these rules and the requirements in Ohio rules.

I advise you to read the Inspection Report sent to you and follow all directions made by the LEPP Inspector. You are also advised to follow the directions of this letter.

Sincerely,



Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

Cc: Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Harry Kallipolitis, Ohio EPA, Central District Office
Madison SWCD
File



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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Certified Mail Return Receipt Requested

June 21, 2006

JP Poultry
C/o Mr. Jim Fleck
8704 State Route 274
New Bremen, Ohio 45869

Re: Director's Notice of Hearing

Dear Mr. Fleck:

This document is to serve as a notice that the Ohio Department of Agriculture ("Department"), under the authority of Section 903.16 of the Ohio Revised Code (ORC), proposes to issue an order to Jim Fleck and JP Poultry imposing a total civil penalty of \$98,491.00 because of ODA's determination that Jim Fleck and JP Poultry have failed to comply with ORC Sections 903.02 and 903.04. Specifically, two modifications were made to the existing Concentrated Animal Feeding Facility (CAFF) without first obtaining a Permit to Install (PTI) as required by ORC Section 903.02(A)(2). First, a new manure storage barn was constructed without obtaining a PTI. Second, the Insect and Rodent Control Plan (IRCP) was modified without first obtaining a PTI. For these two violations of ORC Section 903.02, ODA proposes a penalty in the amount of \$49,245.00. Finally, Jim Fleck and JP Poultry made changes to operating requirements in the Review Compliance Certificate (RCC) issued by Order 2004-066 on April 9, 2004 (JPPO-0001.RC001-MERC) without authorization by the Director in violation of ORC Section 903.04. For this violation, ODA proposes a penalty in the amount of \$49,245.00.

The facts in support of the Department's proposed findings of continued noncompliance are as follows:

On May 23, 2005, the Director issued a Notice of Deficiencies Resulting in Noncompliance (NOD) based on failure to comply with the RCC issued for your CAFF. The RCC approved operation with approximately 646,000 cubic feet of manure storage. During an inspection conducted by the ODA Livestock Environmental Permitting Program (LEPP) on February 9, 2005, ODA discovered that a new and additional manure storage barn had been constructed at the facility. The new manure storage barn has a storage capacity of approximately 96,000 cubic feet. The new barn increased manure

storage capacity approximately fifteen per cent from approximately 646,000 cubic feet to approximately 742,000 cubic feet.

Any expansion of manure storage capacity of more than ten per cent is considered to be a modification of the CAFF. OAC 901:10-1-01(FFF).¹ After August 19, 2002, no person shall modify an existing CAFF without first obtaining a Permit to Install (PTI) issued by ODA. ORC Section 903.02(A)(2). Therefore, prior to building the new manure storage barn, JP Poultry and Jim Fleck were obligated to obtain a PTI.

In addition, each RCC is required to contain an IRCP. ORC Section 903.04(E)(2)(d). The IRCP included in the RCC only covers the manure storage facilities that were in existence at the time ODA issued the RCC. Constructing a new manure storage barn required submittal of a new IRCP to ODA that included information related to the new manure storage barn. Any changes to the IRCP must be reviewed and approved by the Director to include the new manure storage barn. OAC 901:10-1-01(FFF)(3). Therefore, changing the IRCP required the submittal of a PTI application. ORC Section 903.02(A)(2).

Jim Fleck and JP Poultry were issued a RCC. (See Order 2004-066, April 9, 2004). The RCC merged and became part of the PTI previously issued by the Ohio Environmental Protection Agency (OEPA). ORC Section 903.04(G). A facility that is issued an RCC must comply with the OEPA-issued PTI as amended by the RCC. ORC Section 903.04(I). ODA has also determined that Jim Fleck and JP Poultry are operating a CAFF in violation of the RCC, a violation of ORC Section 903.04.

The RCC issued to Jim Fleck and JP Poultry authorized JP Poultry to continue operating based on findings made by the Director that the Facility is "of correct design capacity; that the Facility is in compliance with the PTI issued by the Ohio Environmental Protection Agency; that the Facility's Manure Management Plan, Insect and Rodent Control Plan, and Mortality Management Plan all conform to best management practices; and that the Facility is operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas." (See Order 2004-066, April 9, 2004 at 11)

By constructing the new manure storage barn without authorization from OEPA or ODA, the RCC does not contain information that reflects current operating conditions at JP Poultry, including, but not limited to the following:

- 1) The RCC does not have a Manure Management Plan that specifies the frequency of inspections to be conducted at all manure storage and treatment facilities, including the new manure storage barn at JP Poultry, as required by rule 901:10-2-08 of the OAC
- 2) The RCC has not had an Insect and Rodent Control Plan submitted that specifies management controls for all manure storage and treatment facilities,

¹ The NOD issued by the Director on May 23, 2005 cited OAC 901:10-1-01(VV), which was amended and renumbered effective September 15, 2005 as OAC 901:10-1-01(FFF).

including the new manure storage barn, as required by rule 901:10-2-19 of the OAC

In order to correct violations of ORC Sections 903.02 and 903.04, JP Poultry and Jim Fleck were required to submit applications for a PTI and Permit To Operate in accordance with a schedule set forth by the Director in the NOD, which allowed for at least 180 days to return to compliance. To date, neither JP Poultry nor Jim Fleck has returned to compliance.

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with this proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: William A. Hopper, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on June 21, 2006.

Please note that if your company is a corporation, only an attorney at law admitted to practice in the State of Ohio may represent a corporation at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed civil penalty should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department may issue a final order without a hearing

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Andy Ety, LEPP Engineer
Gail Rodabaugh, LEPP Inspector
Jennifer Tiell/Kristina Erlewine, Legal Counsel
Anthony L. Seegers, Assistant Attorney General
Cathy Alexander, Ohio EPA
Mike Nishimura, ODNR-DSWC
Mercer SWCD
File



Ohio Department of Agriculture



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June 19, 2006

Frisian Hijma Dairy LLC
12464 Rd. 100
Kenton, OH 43326

Certified Mail Return Receipt Requested

Johannes and Sybolt Hijma
P. O. Box 11
Kenton, OH 43326

PTO#: FRI-0001.PO001-HARD

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Dear Messrs. Hijma:

Pursuant to the Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Frisian Hijma Dairy LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Frisian Hijma Dairy LLC has failed to comply with Rule 901:10-2-08(A)(4)(a) of the Ohio Administrative Code (OAC).

I. VIOLATION: FAILURE TO MAINTAIN FREEBOARD

ODA has determined that Frisian Hijma Dairy LLC has failed to maintain adequate freeboard as required by OAC Rule 901:10-2-08(A)(4)(a). At a routine inspection on May 24, 2006 and a limited inspection on June 2, 2006, the required freeboard was not maintained in your stormwater/leachate storage pond. As of June 2, 2006, there were three inches of freeboard available in your stormwater/leachate storage pond. Because the stormwater in this pond contains silage leachate and is contaminated with manure from the barns, it is considered to be "manure" under O.R.C. Section 903.01(O) and must be removed in accordance with your manure management plan.

II. CORRECTIVE ACTIONS REQUIRED

You have ten (10) days from the date on this letter within which you must correct these deficiencies by removing the contaminated stormwater and handling it correctly. You must keep records of the amounts removed and the final application or use of the contaminated stormwater in your operating records. You must make these records available to the ODA Livestock Environmental Permitting Program inspector.

After the ten (10) day time period specified in this Notice has elapsed, an inspector will inspect your facility to determine whether or not you are in compliance. If you are still not in compliance, ODA will consider proceeding with other enforcement options, including assessing a civil penalty.

III. PENALTY ASSESSMENT

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the OAC. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violations is low level. The appropriate penalty in this matter will be \$800.00 per day beginning May 24, 2006, unless the deficiencies are corrected within ten (10) days from the date on this letter.

ODA reminds you of the need to comply with the land application rules and your manure management plan if you decide to land apply to reduce the stormwater/leachate level in the pond.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Chris Rodabaugh, LEPP Inspector
Anthony Seegers, Assistant Attorney General
Cathy Alexander, Ohio EPA
Hardin County SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-387-0470 • Fax 614-728-6300

ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

June 13, 2006

Dirk Winkel
Eastwood Dairy LLC
9235 Wildman Road
South Charleston, Ohio 45368

Certified Mail Return Receipt Requested

Re: Warning Letter

Mr. Winkel,

I am writing to you as a result of an inspection conducted by my staff on June 1, 2006. The Engineer from the Livestock Environmental Permitting Program (LEPP) found during this inspection that there had been a discharge from the manure sand-settling pit located on the western side of the facility. The manure had discharged into the storm water diversion ditch where it had been contained. In addition to the western sand-settling pit having discharged, the eastern sand-settling pit is within one inch of discharging. You are required to bring both of these structures into minimum freeboard requirements of six inches plus the 24-hour storm event immediately.

Rule 901:10-2-05(A)(4) of the Ohio Administrative Code (OAC) requires you to maintain an operating level that provides, at a minimum, storage to contain a precipitation event plus an additional six inches of freeboard. Other ODA rules require you to monitor the manure liquid volume and levels weekly and to record the levels in your Operating Record. These requirements are in Rules 901:10-2-08(A)(4)(f) and 901:10-2-16(A)(1)(a). Failure to comply with the aforementioned Rules may result in enforcement and penalties of up to \$10,000.00 per day.

In addition to the above rules of the OAC being violated, there are other rules that have been violated as a result of the manure discharge including:

- Rule 901:10-4-05(E): Failure to follow the Emergency Response Plan in Eastwood Dairy LLC's permit;
- Rule 901:10-4-05(E)(4): Failure to report the manure spill. The OAC requires the owner or operator to report the spill as soon as possible, but no more than twenty-four hours following first knowledge of the occurrence of the following:
 - Time at which the discharge occurred or was discovered;
 - Approximate amount and characteristics of the discharge;
 - Receiving waters affected;
 - Circumstances that created the discharge;
 - Names and telephone numbers of persons having knowledge of the discharge;
 - Steps taken to clean up the discharge;
 - Names and telephone numbers of the persons responsible for the cleanup.

- Rule 901:10-4-05(E)(7): Failure to file a written report of the occurrence in letter form within five days following the first knowledge of the occurrence unless waived by the director permitting an extension of time.

Finally, I advise you that these requirements for periodic monitoring, and records of liquid manure levels are all requirements of federal rules enforced by the United States Environmental Protection Agency. My staff and I will work with you to answer any questions you may have about these rules and the requirements in Ohio rules.

I advise you to read your Inspection Report carefully and follow all directions made by the LEPP Inspector. You are also advised to follow the directions of this letter.

Sincerely,



Kevin H. Elder

Executive Director, Livestock Environmental Permitting Program

Enclosure

Cc: Christine Pence, LEPP Inspector
Jennifer Tiell, Legal Council

CC without enclosure: Cathy Alexander, Ohio EPA
Clark SWCD
Mike Grand



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

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Phone: 614-387-0470 • Fax 614-728-6335

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Certified Mail Return Receipt Requested

May 22, 2006

Todd Hoffman
Hoffman Farms
5640 West 950 South
Silver Lake, IN 46982

Re: Warning Letter

Dear Mr. Hoffman:

Violation of Ohio Department of Agriculture laws and rules was discovered during a complaint investigation by my staff on May 10, 2006. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found violations of Ohio law surrounding your operations. These violations include the following:

Rule 901:10-2-14 of the Ohio Administrative Code (OAC) provides as follows at paragraph (C)(3) and Appendix A, Table 2:

1. Need to maintain a distance as setback between the manure application area and a private well, with either 100 feet if manure is incorporated within 24 hours or 300 feet if manure is not incorporated.

Rule 901:10-1-06 of the Ohio Administrative Code (OAC) provides that the Director may commence enforcement against a Certified Livestock Manager pursuant to paragraph (C) (1) (b) as follows:

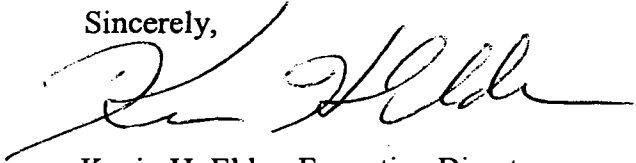
1. Fails to exercise reasonable care, judgment or use of the manager's knowledge and ability in the performance of the duties of a certified livestock manager.

The complaint investigation showed that manure had been applied to a field located south and east of Vissers Dairy, LLC, located at 09711 Breining Road, Mark Center, Ohio. According to the Dairy's operating records, there were applications of sand separated solid manure applied April 10, 2006 and May 7, 2006. There were 9.6 tons per acre applied in April and 4.4 tons per acre applied in May. There were 11,765 gallons per acre of liquid manure from the manure pond applied May 8, 2006. Todd Hoffman,

Hoffman Farms, performed the applications. At least one of these applications was applied within ten feet of the well. The manure was not incorporated within 24 hours. The field cover was bean stubble with some weeds growing.

Please assure that the items noted in this letter are prevented in future applications. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If any follow-up inspection indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin H. Elder', written over a horizontal line.

Kevin H. Elder, Executive Director
Livestock Environmental Permitting Program

CC: Vissers Dairy, LLC
Cathy Alexander– Ohio EPA
Mike Nishimura – ODNR
Defiance SWCD
Jennifer Tiell – ODA Legal Counsel



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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April 26, 2006

Certified Mail Return Receipt Requested

Pork Champs, LLC.
1136 Coldicott Hill Road
Lucasville, Ohio 45648

William Ringler
572 Waldo-Fulton Road
Waldo, Ohio 43356

Dave Heisler
3829 Pleasantbrook Drive
Hilliard, Ohio 43026

Re: **NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Pork Champ, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Pork Champ, LLC has failed to comply with Rule 901:10-2-01(B)(2) of the Ohio Administrative Code (OAC).

I. VIOLATION: FAILURE TO COMPLY WITH PERMIT TO INSTALL PRIOR TO STOCKING WITH ANIMALS

ODA has determined that OAC 901:10-2-01(B)(2) has been violated. Specifically, facilities constructed in accordance with a Permit to Install (PTI) issued by ODA are required to be inspected by the Director or an authorized representative in a timely manner **prior** to stocking with animals. OAC 901:10-2-01(B)(2)

On August 22, 2005, the Director of the Ohio Department of Agriculture issued PTI POR-0001.PI001.PIKE to you. The PTI authorized remodeling of three barns and constructing an additional barn. During a construction inspection conducted on April 24, 2006, the ODA inspector discovered that Pork Champ, LLC had expanded the sow numbers at the facility without stocking approval from ODA.

II. CORRECTIVE ACTIONS REQUIRED

Pork Champ, LLC shall submit a notarized letter certifying that the facilities were constructed in accordance with the design plans to ODA immediately upon receipt of this NOD but no later than May 15, 2006. A copy of the completed and approved as-built plans shall be submitted to ODA immediately upon receipt of this NOD but not later than May 15, 2006 in order to complete the permanent record for PTI POR-0001-PI001-PIKE. Finally, Pork Champ, LLC shall complete final grading/seeding by June 1, 2006.

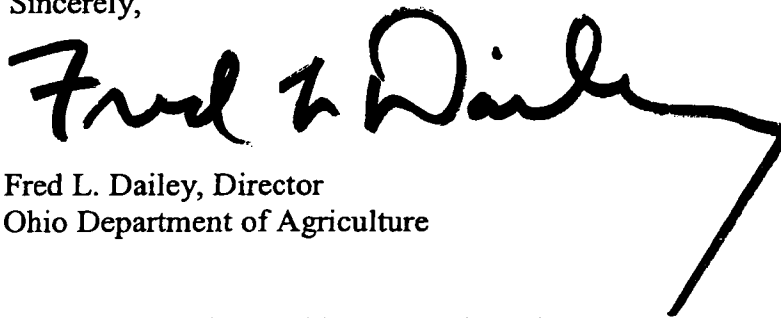
III. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are the first cited violations with the category of seriousness of the violations as Category Major, and the gravity of the effect of the violations as minor.

Therefore, if you fail to comply with the corrective actions required herein, Pork Champ, LLC will be subject to the assessment of a civil penalty in the amount of \$800 for each day of violation.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Pike SWCD



Ohio Department of Agriculture



Governor Bob Taft

Lieutenant Governor Jennette Bradley

Director Fred L. Dailey

Administrative Offices

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ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

April 26, 2006

Visser Dairy, LLC
09711 Breining Road
Hicksville, Ohio 43526

Visser Dairy, LLC
C/o Petrus (Paul) Visser
Cornelia (Corina) A.A. Visser-Joosen
502 West High St. Apt. 8
Mark Center, OH 43536

Certified Mail Return Receipt Requested

Dear Mr. and Mrs. Visser:

Re: **NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE**

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Visser Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance. ODA has determined that Visser Dairy has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-2-01(B)(2).

I. VIOLATION

ODA has determined that O.A.C. 901:10-2-01(B)(2) of the OAC has been violated. Specifically, O.A.C. 901:10-2-01(B)(2) requires, in pertinent part, that: "Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted to demonstrate compliance with paragraph (A) of rule 901:10-2-05 or paragraph (A) of rule 901:10-2-06 of the Administrative Code and shall be submitted for the permanent record. Facilities are required to be inspected by the director or an authorized representative in a timely manner prior to stocking with animals."

To date, ODA has not received a copy of the completed and approved as-built plans. During an inspection by ODA on April 20, 2006, the inspector noted that Visser Dairy is using the sand settling basin and added stock to the dairy, without prior inspection and authorization by the Director or his authorized representative.

II. CORRECTIVE ACTIONS REQUIRED

Vissers Dairy shall provide ODA with a copy of completed and approved as-built plans for the sand settling basin as soon as possible but not later than May 10, 2006, including a final survey of the sand settling basin that shows compliance with the approved set of design plans. This shall also include a notarized letter from the owner/operator certifying that the facility was constructed in accordance with the approved permit to install.

III. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-4-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II, and the gravity of the violation as medium. Therefore, if you fail to comply with the corrective action required herein, you will be subject to the assessment of a civil penalty in the amount of \$800 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

Sincerely,

A large, stylized handwritten signature in black ink, reading "Fred L. Dailey". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Andy Ety, LEPP Engineer
Chris Rodabaugh, LEPP Inspector
Jennifer Tiell, Legal Counsel
Defiance SWCD
Cathy Alexander, Ohio EPA
Mike Nishimura, ODNR



Ohio Department of Agriculture



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Director Fred L. Dailey

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April 21, 2006

Donald Hershey
Ohio Fresh Eggs LLC
11212 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Re: Director's Notice of Deficiencies Resulting in Noncompliance-Goshen

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Goshen Pullet No. 5. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8, 30.a, 30.c, and 30.d of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

I. FIRST VIOLATION: FAILURE TO MAINTAIN 30% MOISTURE OR LESS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8, 30.a, 30.c, and 30.d of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Goshen Pullet Site No. 5 (OFGO-0001.PO001.HARD) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. ODA has determined that from at least October 7, 2005 through January 7, 2006, OFE has failed to maintain a 30% manure moisture level in Barns Nos. 1, 4, 5, 6, 7, 9, and 10.

OFE's IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development. An inspection at OFE Goshen Pullet No. 5 on March 20, 2006 showed that the conditions in these barns were promoting fly breeding because the manure was not being dried as rapidly as possible as required by the permit due to high levels of manure that can block the pit fans. Further, OFE's daily practice of pushing manure toward the centers of the barns, causing fresh manure to be stacked and piled in the front rows is resulting in high fly spec card counts in the front and rear of three bays of the barns. This stacking of fresh manure has two effects: (1) it slows the drying of fresh manure by decreasing the surface area. (2) it decreases the efficiency of the drying fans by stacking the manure higher than the remainder of the row height, i.e., at the immediate front or immediate rear.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE Goshen Pullet No. 5 is required to immediately take appropriate measures to control flies in Barn Nos. 1, 4, 5, 6, 7, 9 and 10 Appropriate measures include the following:

- a) Manure shall remain where it falls to increase drying efforts.
- b) Increase the number of pit fans. Space these fans 35 feet apart instead of 70 feet apart.
- c) Change insecticides in use, to avoid resistance build up in pests;
- d) Increase turning;
- e) Additional seeding of beneficials (if turning is not done);
- f) Use of parasitic wasps;
- g) Use of fungus.

By April 26, 2006, fly levels shall be reduced to "moderate" and further reduced by May 1, 2006 to "low" or "none" in all barns. By May 15, 2006, a LEPP Inspector will re-inspect the facilities to determine if the fly levels are reduced to "low" or "none."

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first-cited violations with the category of seriousness of the violations as major Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of to \$1,000.00 per week for 90 days or 13 weeks for at total of \$13,000.00 for violation of wet manure. All violations have the potential for escalated enforcement.

II. FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Goshen Pullet Site No. 5 (OFGO-0001.PO001.HARD) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations. The Management Team shall conduct the bi-weekly pit inspections. The results of these inspections shall be recorded on the Pit Insect Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form).

The IRCP requires the Site Production Manager [Wilfredo Melendez] to sign the FEM-5 Form when actions have been taken and to return the completed forms to the Compliance Officer [Cale Ayres]. During the inspection of the Operating Records conducted on March 20, 2006, the LEPP Inspector found that for a period of 208 days, from August 24, 2005 to March 20, 2006, OFE Goshen Pullet No. 5 failed to complete Form FEM-5 to document corrective actions with the signature of the Site Production Manager and the date that the actions were complete.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately ensure that the Site Production Manager is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

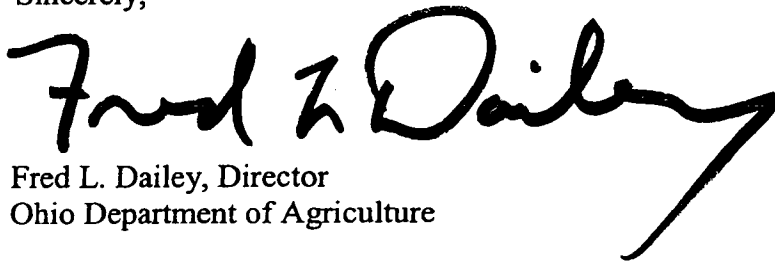
C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,000.00 per week for 30 weeks, for a total of \$60,000 and the potential for escalated enforcement.

By May 15, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink, reading "Fred L. Dailey". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Howard Lyle, Hardin SWCD



Ohio Department of Agriculture



Governor Bob Taft

Lieutenant Governor Jennette Bradley

Director Fred L. Dailey

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April 5, 2006

Donald Hershey
Ohio Fresh Eggs LLC
11212 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE- MARSEILLES**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Marseilles Layer Site No. 6. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraphs 8, 30.a, 30.c, and 30.d of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

A. VIOLATION

OAC 901:10-1-10(G) and Paragraphs 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for the Marseilles Layer Site No. 6 (OFMA-0001.PO001.WYAN). The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Marseilles Layer Site No. 6 requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. ODA has determined that from at least October 1, 2005 through December 31, 2005, OFE has failed to maintain a 30% manure moisture level at Barns Nos. 1, 2, 4, 6, 7, 8, 9, 11, 13, 15 and 16. Further, manure in Barns Nos. 7 and 16 exceeded manure moisture levels at 50%. OFE's IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development.

An inspection at OFE Marseilles on March 2, 2006 showed that the conditions in these barns were promoting fly breeding and abundant to extreme levels of larvae because the manure was not being dried as rapidly as possible by the use of pit fans, as required by the permit. Specifically, several barns have high and very high rows of manure. The LEPP Inspector determined that OFE has not complied with the manure removal schedule as required by the Consent Order and reflected in the terms of the permit that manure be removed two times per barn, per year, alternating rows removed each year (There are four rows of manure in each barn).

“a. Rows 1 and 3 of manure is removed from each barn each spring (approx. Feb.-May);

“b. Rows 2 and 4 of manure may be removed from each barn each mid-late summer through autumn (approx. June-Dec.).” As a result, these high and very high rows disrupt the airflow of the exhaust or “pit” fans, blocking airflow to all manure, thus decreasing the drying of lower rows of manure.

Finally, the IRCP requires the Site Production Manager [Artemio Alarcon] to sign the FEM-5 Form when actions have been taken and to return the completed form to the Compliance Officer [Cale Ayres]. The LEPP Inspector found that for a period of at least 208 days from August 24, 2005 to March 2, 2006, OFE Marseilles failed to complete Form FEM-5 to document corrective actions with the signature of the Site Production Manager and the date that the actions were complete.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately take appropriate measures to control larvae in Barn Nos. 1, 2, 4, 6, 7, 8, 9, 11, 13, 15 and 16. Appropriate measures include the following:

- a) Increase the number of pit drying fans. Spacing these fans 35 feet apart instead of 70 feet apart;
- b) Change insecticides in use, to avoid resistance build up in pests;
- c) Increase turning;
- d) Additional seeding of beneficials (if turning is not done);
- e) Use of parasitic wasps;
- f) Use of fungus.

In addition, OFE Marseilles shall immediately begin to remove manure from at least two rows of each barn with insecticide treatment prior to removal from the barns. By April 15, 2006, fly and larvae levels shall be reduced to “moderate” and further reduced to “low” or “none” by April 30, 2006 in all barns. During the first week of May 2006, a LEPP Inspector will re-inspect the facilities to: 1) Determine if the fly and larvae levels are reduced to “low” or “none;” 2) Determine whether or not manure will be removed by May 31, 2006; and 2) Inspect the Operating Records for compliance with Form FEM-5.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), (J) and (K). Based upon this review, ODA has determined that violations regarding failure to remove manure as cited herein are first-cited violations with the category of seriousness of the violations as major Category I, and the gravity of the violations as low. However, failure to complete the FEM-5 Forms is a repeated violation, cited in a NOD issued to OFE Marseilles on September 10, 2005 and failure to maintain manure moisture levels at 30% is a repeated violation, cited in a NOD issued January 10, 2005. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty for the first-cited violations for failure to remove manure and abundant to extreme levels of flies and larvae in the amount of up to **\$2,000.00 per day for 120 days or \$240,000.00**. For the repeated violations, a Category II violation, with a low gravity, OFE Marseilles would be subject to the assessment of a civil penalty in an amount of up to **\$3,000.00 for 208 days or \$624,000.00**. All violations have the potential for escalated enforcement.

During the first week of May 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$864,000.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,


Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Wyandot SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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April 5, 2006

Donald Hershey
Ohio Fresh Eggs LLC
11212 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE- MT. VICTORY**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Mt. Victory Layer Site No. 5. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraphs 8, 30.a, 30.c, and 30.d of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Mt. Victory Layer Site No. 5 (OFMT-0001.PO001.HARD) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. ODA has determined that from at least October 1, 2005 through December 31, 2005, OFE has failed to maintain a 30% manure moisture level at Barns Nos. 2, 3, 5, 9 and 10. OFE's

IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development.

An inspection at OFE Mt. Victory on March 13, 2006 showed that the conditions in these barns were promoting fly breeding and abundant to extreme levels of larvae because the manure was not being dried as rapidly as possible as required by the permit due to faulty placement and focus of pit fans.

In addition, the IRCP requires the Site Production Manager [Octario Chavez] to sign the FEM-5 Form when actions have been taken and to return the completed forms to the Compliance Officer [Cale Ayres]. The LEPP Inspector found that for a period of at least 217 days from August 24, 2006 to March 13, 2006, OFE Mt. Victory failed to complete Form FEM-5 to document corrective actions with the signature of the Site Production Manager and the date that the actions were complete.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE Mt. Victory is required to immediately take appropriate measures to control larvae in Barn Nos. 2, 3, 5, 9 and 10. Appropriate measures include the following:

- a) Increase the number of pit fans. Space these fans 35 feet apart instead of 70 feet apart;
- b) Change insecticides in use, to avoid resistance build up in pests;
- c) Increase turning;
- d) Additional seeding of beneficials (if turning is not done);
- e) Use of parasitic wasps;
- f) Use of fungus.

By April 15, 2006, fly and larvae levels shall be reduced to "moderate" and further reduced to "low" or "none" by April 30, 2006 in all barns. During the first week of May 2006, a LEPP Inspector will re-inspect the facilities to: 1) Determine if the fly and larvae levels are reduced to "low" or "none;" and 2) To inspect the Operating Records for compliance with Form FEM-5.

C. PENALTY ASSESSMENT

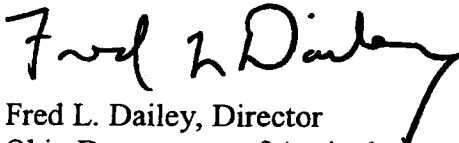
Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations for manure moisture exceedances cited herein are violations with the category of seriousness of the violations as major Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with the corrective actions required herein, OFE or its owners and/or operators

would be subject to the assessment of a civil penalty in the amount of to **\$4,000.00 for 120 days or \$480,000** for wet manure. For the repeated violations, also cited in a NOD issued September 2, 2005, regarding records maintained by Form FEM-5, a Category II violation, with a low gravity, OFE Mt. Victory would be subject to the assessment of a civil penalty in the amount of up to **\$3,000.00 for 217 days or \$651,000.00**. All violations have the potential for escalated enforcement.

During the first week of May 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty of \$1,131,000.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Howard Lyle, Hardin SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 4306
Phone: 614-387-0470 • Fax 614-728-633

ODA home page: www.state.oh.us/agr/ • e-mail: agri@mail.agri.state.oh.us

March 23, 2006

Porky's Swine Farm
C/o Travis Temple
6688 SR 219
Celina, OH 45822

Certified Mail

Re: Warning Letter

Dear Mr. Temple:

Violations of the Ohio Department of Agriculture rules were discovered during a routine inspection of Porky's Swine Farm on March 13, 2005. On that date, the LEPP Inspector noted the facility was lacking operating inspection records for daily water line and weekly liquid manure storage volume. Also, rodent holes in the lagoon banks were not reported in the operating inspection record and had not been repaired to comply with requirements from the inspection of October 31, 2005.

Porky's Swine Farm is required to comply with the contents of the Manure Management Plan that is approved in the facility's Review Compliance Certificate (RCC).

Rule 901:10-2-08(A)(4)(n) states:

Inspect drinking water lines daily, including drinking water or cooling water lines that are allocated above ground, readily visible or accessible for daily inspections, and record in the operating record.

Further, rule 901:10-2-08(A)(4)(f) states:

Inspect liquid manure volume weekly and note in the operating record the level of liquid manure in manure storage or treatment facilities by the depth marker required in paragraph (A)(4)(o) of this rule.

Also, rule 901:10-2-08(A)(4)(e) states:

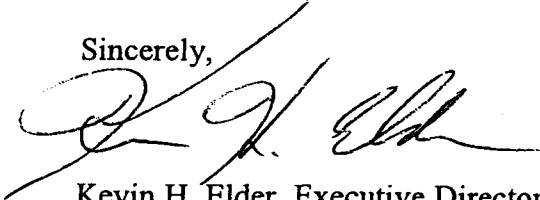
Manure storage or treatment facilities under the control of the owner or operator shall be inspected for evidence of erosion, leakage, animal damage, cracking, excessive vegetation, or discharge.

In addition, rule 901:10-2-08(A)(4)(q) states:

Actions to be taken means actions to correct any deficiencies found as a result of the inspections conducted under this rule. Deficiencies are to be corrected as soon as possible and listed in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.

On or shortly thereafter the date of May 1, 2006, an inspector will re-inspect your operation to assure the items noted in the letter have been addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. H. Elder', is written over a horizontal line.

Kevin H. Elder, Executive Director
Livestock Environmental Permitting Program

Cc: Gail Rodabaugh, LEPP inspector
Jennifer Tiell, Legal Counsel
Cathy Alexander, Ohio EPA
Mike Nishimura, ODNR-DSWC
Bill Knapke, Cooper Farms
Darke SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

Certified Mail return Receipt requested

March 22, 2006

Henk Arts
Arts Dairy, LLC
5624 Elm Sugar Rd.
Convoy, OH 45832
419-749-0033

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Dear Mr. Arts:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Arts Dairy, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Arts Dairy, LLC has failed to comply with Rules 901:10-1-10(G) and 901:10-3-04(a)(1) of the Ohio Administrative Code (OAC).

I. VIOLATION: UNAUTHORIZED DISCHARGE TO WATERS OF THE STATE

ODA has determined that OAC Rule 901:10-3-04(A)(1) has been violated.

Specifically, OAC Rule 901:10-3-04(A)(1) that there must be no discharge of manure into waters of the state from the production area of a facility as defined in OAC Rule 901:10-1-01(II).

ODA has determined that a manure discharge occurred at the production area of the dairy to a road ditch, called Goodwin Ditch, with the discharge starting at Arts Dairy and going east to Ward Road for a distance of 1.2 miles. The manure discharge occurred on or before March 1, 2006.

II. CORRECTIVE ACTIONS REQUIRED

You must correct these deficiencies by performing the following:

1. Continue to clean and pump the Goodwin Ditch for the complete distance of manure distance, pumping the deepest areas and digging sumps to permit manure-laden liquid to be collected and pumped
2. Maintain dam in Goodwin Ditch until manure is removed.
3. Continue to clean and pump out the construction ditch, until it is completely cleaned out and all manure-laden water is prevented from flowing to the ditch. You are required to pump the construction ditch after any rainfall exceeding an amount of one-half inch.
4. Maintain tile plugs in place until there is no manure remaining in the tile.
5. Provide the LEPP Inspector with all operating records recording manure levels and manure removal that are required to be maintained in accordance with OAC 901:10-2-08(A)(4)(f) and (g)
6. Drain all surface water south of the construction ditch so that manure-laden water can flow to the construction ditch to be pumped to the manure store pond or otherwise used for field application.
7. Within 10 days of receipt of this Notice of Deficiencies, submit a report to the ODA LEPP Inspector explaining the circumstances that created the discharge, the time when the discharge may have occurred, including the location of the leak or spill, and quantity of discharge. Upon receipt of the report, Arts Dairy may be directed to identify the approximate location of all known subsurface drains within one hundred feet of the manure storage pond.
8. Be advised that manure discharges from the production area of the dairy must be reported in the annual report required by OAC 901:10-2-20 for calendar year 2006.

On or about April 15, 2006, a LEPP Inspector will re-inspect your facility to determine if the corrective actions listed above have been completed.

If you are still not in compliance, ODA will consider proceeding with other enforcement options, including assessing a civil penalty.

III. PENALTY ASSESSMENT

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the OAC. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate since you reported the manure discharge and the gravity of the violations is low level. The appropriate penalty in this matter will be \$200.00 per day beginning March 1, 2006 unless the deficiencies are corrected by April 15, 2006 for 46 days of noncompliance and a total of \$9,200.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, reading "Fred L. Dailey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Chris Rodabaugh, LEPP Inspector
Mary Beth Ruttan, Assistant Attorney General
Cathy Alexander, Ohio EPA
Van Wert SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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March 9, 2006

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE – CROTON PULLET NO. 4**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Pullet No. 4. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY
MANAGEMENT TEAM PIT INSECT INSPECTIONS**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Pullet No. 4 (OFP4-0001.PO001.LICK) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

According to the permit, from November through April, the Management Team shall conduct the bi-weekly pit inspections. The results of these inspections shall be recorded on the Pit Insect

Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated January 26, 2006, OFE submitted a Table of Organization to ODA listing Don Hershey as Director of Operations, Chris Art as the Sr. Production Manager, Ronald Bishop as the Site Production Manager, and Stephanie Tudor as the Compliance Officer at OFE Croton Pullet No. 4, which ODA construes as the individuals and titles of persons of the OFE Management Team.

During an inspection conducted on February 20, 2006, ODA reviewed the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6) for the period of August 8, 2005 through January 30, 2006. Beginning December 1, 2005, records show that Stephanie Tudor, Don Hershey, Chris Art, and Ronald Bishop conducted pit inspections as members of the Management Team. However, from December 1, 2005 through January 30, 2006, the entire Management Team conducted only one inspection. That inspection occurred on January 9, 2006.

ODA has determined that from December 1, 2005 through January 30, 2006, OFE's Management Team failed to conduct bi-weekly inspections and to complete the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6 forms) as required by OFE's PTO.

II. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

III. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with

the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 9 weeks, for a total of \$22,500 and the potential for escalated enforcement.

By March 31, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$22,500.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink, reading "Fred L. Dailey". The signature is stylized with a large, sweeping "F" and a long, horizontal stroke at the end.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kiracofe, Licking SWCD



Ohio Department of Agriculture



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March 9, 2006

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE – CROTON HATCHERY/BREEDER PULLET**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Hatchery/Breeder Pullet. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY
MANAGEMENT TEAM PIT INSECT INSPECTIONS**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Hatchery/Breeder Pullet (OFHB-0001.PO001.LICK) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

According to the permit, from November through April, the Management Team shall conduct the bi-weekly pit inspections. The results of these inspections shall be recorded on the Pit Insect

Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated January 26, 2006, OFE submitted a Table of Organization to ODA listing Don Hershey as Director of Operations, Chris Art as the Sr. Production Manager, Jose Rashra as the Site Production Manager, and Stephanie Tudor as the Compliance Officer at OFE Croton, which ODA construes as the individuals and titles of persons of the OFE Management Team.

During an inspection conducted on January 30, 2006, ODA reviewed the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6) for the period of August 8, 2005 through January 30, 2006. Beginning December 1, 2005, records show that Stephanie Tudor, Don Hershey, Chris Art, and Jose Rashra conducted pit inspections as members of the Management Team. However, from December 1, 2005 through January 30, 2006, the entire Management Team conducted only one inspection. That inspection occurred on January 9, 2006.

ODA has determined that from December 1, 2005 through January 30, 2006, OFE's Management Team failed to conduct bi-weekly inspections and to complete the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6 forms) as required by OFE's PTO.

II. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

III. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with

the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 9 weeks, for a total \$22,500.00 and the potential for escalated enforcement.

By March 31, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$22,500.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kiracofe, Licking SWCD



Ohio Department of Agriculture



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March 9, 2006

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE – CROTON LAYER SITE NO. 1**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer Site No. 1. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F), 901:10-2-08 and 901:10-2-17 and certain requirements set forth in paragraph 8, 36, and 37 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99-CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT DAILY FREEBOARD
INSPECTIONS AND RECORD IN THE OPERATING RECORD**

A. VIOLATION

OAC 901:10-1-10(F) and Paragraph 36 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Manure Management Plan Waste Water/Storm Water Plan (MMP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No.1 (OFL1-0001.PO001.LICK) requires that OFE conduct daily inspections of the storm water ponds and document the results of these inspections in the operating record in accordance with OAC 901:10-2-08.

ODA has determined that OFE has failed to conduct daily inspections of the storm water pond in order to maintain adequate freeboard as required by OAC 901:10-2-08(A)(4)(h). At a limited inspection on January 19, 2006, the LEPP Inspector observed that there was no freeboard available in storm water pond, measurements taken confirmed a total lack of freeboard, and it was discovered that there were no inspection records documenting daily inspections in the Operating Record.

Specifically, OFE's MMP requires that a Compliance Officer inspect each storm water containment pond daily for freeboard. The inspection is to be recorded on the Croton Checklist form for the operating record.

B. CORRECTIVE ACTION REQUIRED

OFE shall conduct the required daily freeboard inspections and record inspection results in the operating record.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as minor or Category III, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$200.00 per day and the potential for escalated enforcement.

II. SECOND VIOLATION: FAILURE TO MAINTAIN FREEBOARD

A. VIOLATION

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Manure Management Plan Waste Water/Storm Water Plan (MMP) at 4. Surface Water Protection and Stormwater Controls contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No.1 (OFL1-0001.PO001.LICK) requires that OFE conduct daily inspections of the storm water ponds to ensure that two feet of freeboard is maintained.

On January 19, 2006, staff of the Ohio EPA Division of Drinking and Groundwater (DDAGW) conducted an inspection at OFE Croton Layer No. 1. The DDAGW staff contacted Harry Kallipolitis, Ohio EPA, Division of Surface Water to report high water problems occurring at OFE Croton Layer No. 1. Mr. Kallipolitis proceeded to contact Jim Young, ODA Livestock Environmental Permitting Program (LEPP) Inspector to request an investigation by ODA.

The LEPP Inspector found that the recently installed, temporary and unauthorized storm water pond was completely full. In addition, the pre-existing storm water pond was also at full capacity, as was an excavated area between the original storm water pond and the egg wash water pond. None of the ponds maintained any freeboard, in violation of OAC 901:10-2-08.

B. CORRECTIVE ACTION REQUIRED

OFE shall continue to haul storm water until such time the levels in all ponds correspond with the Manure Management Plan Waste Water/Storm Water Plan for Croton Layer No.1 PTO OFL1-0001.PO001.LICK. By March 31, 2006, ODA will re-inspect the facility to determine if freeboard levels comply with OAC 901:10-2-08.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violations as moderate or Category II and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$1,600.00 per day and the potential for escalated enforcement.

III. THIRD VIOLATION: EMERGENCY RESPONSE NOTIFICATION

A. VIOLATION

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Emergency Response Plan contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No.1 (OFL1-0001.PO001.LICK) and OAC 901:10-2-17 requires that OFE notify ODA of discharges to waters of the State as soon as possible but in no case more than twenty-four hours following first knowledge of the occurrence of the discharge, the approximate amount and characteristics of the discharge, the waters of the state affected by the discharge, the circumstances of the discharge, and the persons with knowledge of and responsibility for cleanup of the discharge.

On January 19, 2006, the LEPP Inspector found storm water between the odd numbered barns on the north side of the operation discharging from the site through a large culvert that passes under Parsons Road, then flowing into a grassed waterway that carried the discharged storm water north and deposited it into an unnamed tributary of Otter Fork. Further investigations of the site revealed an area along Parsons Road where an excavated area between the original storm water pond and the egg wash water pond was nearly over flowing in a low area. At no time did OFE notify ODA of the discharge and resulting manure spill.

B. CORRECTIVE ACTION REQUIRED

OFE is required to comply with the Emergency Response Plan in OFL1-0001.PO001.LICK and OAC 901:10-2-17 (A)(4). OFE shall post signs in each barn at Croton Layer Site No. 1 advising employees of emergency response numbers and procedures in the event of manure spills and discharges to waters of the state. By March 31, 2006, ODA will re-inspect the facility to determine if signs are posted.

C. PENALTY ASSESSMENT

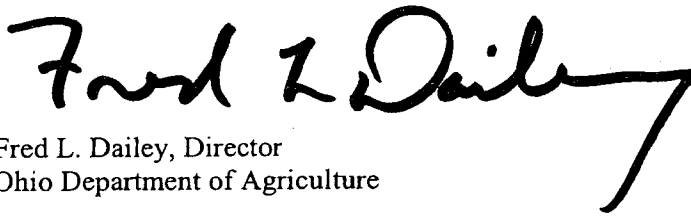
Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as high or Category I, and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject

to the assessment of a civil penalty in the amount of \$3,200.00.00 per day and the potential for escalated enforcement.

If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$ 360,000.00 based on a total of \$ 5,000.00 per day for 72 days, beginning January 19, 2006 and ending March 31, 2006. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink, reading "Fred L. Dailey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Harry Kallipolitis, Ohio EPA
Cathy Alexander, Ohio EPA
Jim Kirakofe, Licking SWCD